

Economic Security

CHAPTER 268

DEPARTMENT OF ECONOMIC SECURITY

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268.001 CITATION; ECONOMIC SECURITY LAW.

This chapter shall be known and may be cited as the "Minnesota Economic Security Law."

History: 1987 c 385 s 47; 1994 c 483 s 1

268.01 [Repealed, 1965 c 45 s 73]

268.011 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.0111 DEFINITIONS.

Subdivision 1. **Applicability.** The definitions in this section apply to this chapter.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of economic security.

Subd. 3. [Repealed, 1987 c 403 art 2 s 164]

Subd. 3a. **Department.** "Department" means the department of economic security.

Subd. 4. **Employment and training services.** "Employment and training services" means programs, activities, and services related to job training, job placement, and job creation including job service programs, Job Training Partnership Act programs, wage subsidies, work readiness programs, job search, counseling, case management, community work experience programs, displaced homemaker programs, disadvantaged job training programs, grant diversion, employment experience programs, youth employment programs, conservation corps, apprenticeship programs, community investment programs, community development corporations, economic development programs, and opportunities industrialization centers.

Subd. 4a. **Homeless individual.** "Homeless individual," or "homeless person" means:

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is:
 - (i) a supervised publicly or privately operated shelter or dwelling designed to provide temporary living accommodations,
 - (ii) an institution that provides a temporary residence for individuals intended to be institutionalized, or
 - (iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for humans.

The term "homeless individual" does not include any individual imprisoned or otherwise detained pursuant to federal or state law.

Subd. 5. **Income maintenance and support services.** "Income maintenance and support services" means programs through which the state or its subdivisions provide direct financial or in-kind support to unemployed or underemployed persons, including reemployment insurance, aid to families with dependent children, Minnesota family investment program—statewide, general assistance, food stamps, energy assistance, disability determinations, and child care. Income maintenance and support services do not include medical assistance, aging services, social services, community social services, mental health services, or services for the emotionally disturbed, the mentally retarded, or residents of nursing homes.

Subd. 5a. **Indian tribe.** For purposes of employment and training services, "Indian tribe" means a tribe, band, nation, or other organized group or community of Indians that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, and for which a reservation exists as is consistent with Public Law Number 100-485, as amended.

Subd. 6. **Local service unit.** "Local service unit" means a county, counties operating under a joint powers agreement, one or more counties and one or more cities of the first class operating under a joint powers agreement, or a city of the first class.

Subd. 7. **Public assistance.** "Public assistance" means aid to families with dependent children, Minnesota family investment program—statewide, and general assistance.

Subd. 8. **Service provider.** "Service provider" means a public, private, or nonprofit agency that is capable of providing or administering one or more of the employment and training services or income maintenance and support services.

Subd. 9. **Wage subsidies.** "Wage subsidies" means issuing of payments to employers to offset the costs of wages, fringe benefits, and training for eligible employees under the limitations established in sections 268.672 to 268.682, and may be referred to as Minnesota employment and economic development (MEED) wage subsidies.

History: 1Sp1985 c 14 art 9 s 38; 1987 c 403 art 2 s 128; 1988 c 689 art 2 s 219; 1989 c 282 art 5 s 121,122; 1990 c 568 art 4 s 61; 1994 c 483 s 1; 1994 c 488 s 8; 1997 c 66 s 1; 1997 c 85 art 4 s 24,25

268.012 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.0121 CREATION.

Subdivision 1. **Purpose.** The department of economic security has broad responsibility to increase the economic independence of Minnesotans with special effort toward those who are currently unemployed or who face special disadvantages in the labor market. The department shall develop employment policies and link training and employment-related services with temporary income replacement and income maintenance programs, veterans' programs, workers' compensation, vocational and post-secondary education, federal income insurance programs, and economic development programs.

Subd. 2. **Commissioner.** The governor shall appoint the commissioner of economic security with the advice and consent of the senate.

Subd. 3. **Unclassified positions.** The commissioner may establish positions in the unclassified service in accordance with section 43A.08. The commissioner may appoint and define the duties of other subordinate officers and employees as the commissioner deems necessary to discharge the functions of the department.

The commissioner may establish the position of director of the state job training office in the unclassified service.

Subd. 4. **Delegation of powers.** The commissioner may delegate, in written orders filed with the secretary of state, any powers or duties subject to the commissioner's control to officers and employees in the department. Notwithstanding any other law, the commissioner may delegate the execution of specific contracts or specific types of contracts to the commissioner's deputies, an assistant commissioner, or a program director if the delegation has been approved by the commissioner of administration and filed with the secretary of state.

Subd. 5. **Receipt of gifts, money.** The commissioner may accept gifts, bequests, grants, payments for services, and other public and private money to help finance the activities of the department.

History: 1Sp1985 c 14 art 9 s 39; 1990 c 571 s 42; 1990 c 589 art 1 s 2; 1994 c 483 s 1

268.0122 POWERS AND DUTIES.

Subdivision 1. **State agency.** The commissioner of economic security is designated the "state agency" as defined by United States Code, title 29, section 49c, the Wagner-Peyser Act, as amended through December 31, 1984.

Subd. 2. **Specific powers.** The commissioner of economic security shall:

(1) administer and supervise all forms of reemployment insurance provided for under federal and state laws that are vested in the commissioner, including make investigations and audits, secure and transmit information, and make available services and facilities as the commissioner considers necessary or appropriate to facilitate the administration of any other

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states, or the federal Economic Security Law, and accept and use information, services, and facilities made available by other states or the federal government;

(2) administer and supervise all employment and training services assigned to the department under federal or state law;

(3) review and comment on local service unit plans and community investment program plans and approve or disapprove the plans;

(4) establish and maintain administrative units necessary to perform administrative functions common to all divisions of the department;

(5) supervise the county boards of commissioners, local service units, and any other units of government designated in federal or state law as responsible for employment and training programs;

(6) establish administrative standards and payment conditions for providers of employment and training services;

(7) act as the agent of, and cooperate with, the federal government in matters of mutual concern, including the administration of any federal funds granted to the state to aid in the performance of functions of the commissioner;

(8) obtain reports from local service units and service providers for the purpose of evaluating the performance of employment and training services; and

(9) review and comment on plans for Indian tribe employment and training services and approve or disapprove the plans.

Subd. 3. Duties as state agency. The commissioner shall:

(1) administer the reemployment insurance benefits laws and related programs;

(2) administer the aspects of aid to families with dependent children, Minnesota family investment program—statewide, general assistance, and food stamps that relate to employment and training services, subject to the contract under section 268.86, subdivision 2;

(3) administer wage subsidies and the discretionary employment and training fund;

(4) administer a national system of public employment offices as prescribed by United States Code, title 29, chapter 4B, the Wagner-Peyser Act, and other federal employment and training programs;

(5) cooperate with the federal government and its employment and training agencies in any reasonable manner as necessary to qualify for federal aid for employment and training services and money;

(6) enter into agreements with other departments of the state and local units of government as necessary;

(7) certify employment and training service providers and decertify service providers that fail to comply with performance criteria according to standards established by the commissioner;

(8) provide consistent, integrated employment and training services across the state;

(9) establish the standards for all employment and training services administered under this chapter;

(10) develop standards for the contents and structure of the local service unit plans and plans for Indian tribe employment and training services;

(11) provide current state and substate labor market information and forecasts, in cooperation with other agencies;

(12) identify underserved populations, unmet service needs, and funding requirements;

(13) consult with the council for the blind on matters pertaining to programs and services for the blind and visually impaired; and

(14) enter into agreements with Indian tribes as necessary to provide employment and training services as funds become available.

Subd. 4. Demonstration projects. The commissioner may conduct and administer demonstration projects to test methods and procedures for providing employment and training services. The demonstration must provide new methods and procedures of administration and must not conflict with the basic purposes, coverage, or benefits provided by law. No

demonstration project authorized by this section is effective until any required approval by a federal agency is obtained and the comprehensive plan, including the estimated project costs, is filed with the commissioner of administration.

Subd. 5. **Rulemaking.** (a) The commissioner may make rules to carry out this chapter.

(b) Effective July 1, 1997, the commissioner may make rules to carry out section 256J.51.

Subd. 6. **Mission; efficiency.** It is part of the department's mission that within the department's resources the commissioner shall endeavor to:

(1) prevent the waste or unnecessary spending of public money;

(2) use innovative fiscal and human resource practices to manage the state's resources and operate the department as efficiently as possible;

(3) coordinate the department's activities wherever appropriate with the activities of other governmental agencies;

(4) use technology where appropriate to increase agency productivity, improve customer service, increase public access to information about government, and increase public participation in the business of government;

(5) utilize constructive and cooperative labor-management practices to the extent otherwise required by chapters 43A and 179A;

(6) report to the legislature on the performance of agency operations and the accomplishment of agency goals in the agency's biennial budget according to section 16A.10, subdivision 1; and

(7) recommend to the legislature appropriate changes in law necessary to carry out the mission and improve the performance of the department.

Subd. 7. **Classification of data on individuals.** Data collected on individuals pursuant to a program operated by the commissioner are private data on individuals as defined in section 13.02, subdivision 12, unless more restrictively classified by law.

History: *1Sp1985 c 14 art 9 s 40; 1987 c 403 art 2 s 129,130; art 3 s 50; 1989 c 282 art 5 s 123,124; 1994 c 483 s 1; 1995 c 248 art 11 s 19; 1995 c 259 art 1 s 40; 1996 c 339 s 2,3; 1997 c 7 art 5 s 34; 1997 c 66 s 80; 1997 c 85 art 4 s 26; 1997 c 245 art 4 s 6; 1998 c 265 s 2; 1998 c 366 s 65*

268.0124 PLAIN LANGUAGE IN WRITTEN MATERIALS.

(a) To the extent reasonable and consistent with the goals of providing easily understandable and readable materials and complying with federal and state laws governing the programs, all written materials relating to services and determinations of eligibility for or amounts of benefits that will be given to applicants for or recipients of assistance under a program administered or supervised by the commissioner of economic security must be understandable to a person of average intelligence and education.

(b) All written materials relating to determinations of eligibility for or amounts of benefits that will be given to applicants for or recipients of assistance under programs administered or supervised by the commissioner of economic security must be developed to satisfy the plain language requirements of the Plain Language Contract Act under sections 325G.29 to 325G.36. Materials may be submitted to the attorney general for review and certification. Notwithstanding section 325G.35, subdivision 1, the attorney general shall review submitted materials to determine whether they comply with the requirements of section 325G.31. The remedies available pursuant to sections 8:31 and 325G.33 to 325G.36 do not apply to these materials. Failure to comply with this section does not provide a basis for suspending the implementation or operation of other laws governing programs administered by the commissioner.

(c) The requirements of this section apply to all materials modified or developed by the commissioner on or after July 1, 1988. The requirements of this section do not apply to materials that must be submitted to a federal agency for approval, to the extent that application of the requirements prevents federal approval.

(d) Nothing in this section may be construed to prohibit a lawsuit brought to require the commissioner to comply with this section.

History: 1988 c 689 art 2 s 220; 1994 c 483 s 1; 1995 c 259 art 1 s 41; 1996 c 339 s 4; 1997 c 7 art 1 s 104

268.0125 ANNUAL REPORT TO LEGISLATURE.

The commissioner shall provide to the legislature no later than January 15 of each year a report of department programs and services. The report must include:

- (1) a description of the department's programs and services;
- (2) the number of clients served by each program or service;
- (3) an evaluation of each program or service; and
- (4) recommendations for changes or improvements to the programs or services.

History: 1996 c 339 s 5

268.013 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.014 COOPERATION WITH OTHER STATE AGENCIES.

To effectively coordinate job training and placement services with future job needs of the state the commissioner shall maintain close liaison, coordination and cooperation with the commissioner of trade and economic development and any other state agency involved in employment issues affecting the state.

History: 1977 c 430 s 13; 1981 c 356 s 186; 1983 c 289 s 115 subd 1; 1987 c 312 art 1 s 26 subd 2

268.02 [Repealed, 1965 c 45 s 73]

268.021 RULES.

The commissioner of the department of economic security is authorized to adopt rules in accordance with chapter 14, with respect to programs the commissioner administers under this chapter and other programs for which the commissioner is responsible under federal or state law.

History: 1983 c 268 s 1; 1984 c 640 s 32; 1Sp1985 c 14 art 9 s 75; 1994 c 483 s 1; 1995 c 233 art 2 s 56

268.022 WORKFORCE INVESTMENT FUND.

Subdivision 1. **Determination and collection of special assessment.** (a) In addition to all other taxes, assessments, and payment obligations under chapter 268, each employer, except an employer making payments in lieu of taxes is liable for a special assessment levied at the rate of one-tenth of one percent per year on all taxable wages, as defined in section 268.04, subdivision 25b. The assessment shall become due and be paid by each employer to the department on the same schedule and in the same manner as other taxes.

(b) The special assessment levied under this section shall not affect the computation of any other taxes, assessments, or payment obligations due under this chapter.

(c) Notwithstanding any provision to the contrary, if on June 30 of any year the unobligated balance of the special assessment fund under this section is greater than \$30,000,000, the special assessment for the following year only shall be levied at a rate of 1/20th of one percent on all taxable wages.

Subd. 2. **Disbursement of special assessment funds.** (a) The money collected under this section shall be deposited in the state treasury and credited to a dedicated fund to provide for the employment and training programs established under sections 268.975 to 268.98; including vocational guidance, training, placement, and job development.

(b) All money in the dedicated fund is appropriated to the commissioner who must act as the fiscal agent for the money and must disburse the money for the purposes of this section,

not allowing the money to be used for any other obligation of the state. All money in the dedicated fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other dedicated funds in the state treasury, except that all interest or net income resulting from the investment or deposit of money in the fund shall accrue to the fund for the purposes of the fund.

(c) No more than five percent of the dedicated funds collected in each fiscal year may be used by the department of economic security for its administrative costs.

(d) Reimbursement for costs related to collection of the special assessment shall be in an amount negotiated between the commissioner and the United States Department of Labor.

(e) The dedicated funds, less amounts under paragraphs (c) and (d) shall be allocated as follows:

(1) 40 percent to be allocated annually to substate grantees for provision of expeditious response activities under section 268.9771 and worker adjustment services under section 268.9781; and

(2) 60 percent to be allocated to activities and programs authorized under sections 268.975 to 268.98.

(f) Any funds not allocated, obligated, or expended in a fiscal year shall be available for allocation, obligation, and expenditure in the following fiscal year.

History: 1990 c 568 art 6 s 1,4; 1990 c 612 s 17; 1991 c 292 art 3 s 33,41; 1993 c 369 s 78,79; 1994 c 483 s 1; 1997 c 66 s 2,80

268.025 [Repealed, 1965 c 45 s 73]

268.026 [Repealed, 1997 c 66 s 81]

268.027 DEPARTMENT OF ECONOMIC SECURITY; MINNEAPOLIS LOCATION; RIGHT OF EMINENT DOMAIN.

Notwithstanding section 16B.24 or chapter 94, the commissioner of administration, in consultation with the commissioner of economic security, is authorized to buy and sell real property in Minneapolis and the greater Minneapolis area for the purpose of relocating department offices to locations more accessible to the residents of Minneapolis and collocating with other social service agencies.

Property acquired under authority of this section may be acquired by gift, purchase, or condemnation proceedings. Condemnation proceedings must be done under chapter 117. Condemnation proceedings authorized by this section may be used to acquire property at only one proposed office site.

History: 1988 c 641 s 5; 1989 c 300 art 1 s 32; 1994 c 483 s 1; 1998 c 254 art 1 s 72

268.03 DECLARATION OF PUBLIC POLICY.

Subdivision 1. **Statement.** The public policy underlying sections 268.03 to 268.23 is as follows: Economic insecurity due to involuntary unemployment is a serious threat to the well-being of the people of Minnesota. Involuntary unemployment is a subject of general interest and concern that requires appropriate action by the legislature to prevent its spread and to lighten its burdens. The public good and the well-being of the citizens of Minnesota will be promoted by providing, under the taxing powers of the state for the compulsory setting aside of reserves to be used for the benefit of individuals unemployed through no fault of their own. In recognition of its focus on providing a temporary partial wage replacement to assist the unemployed worker to become reemployed, this program will be known as "reemployment insurance."

Subd. 2. **Standard of proof.** All issues of fact under sections 268.03 to 268.23 shall be determined by a preponderance of the evidence. Preponderance of the evidence means evidence in substantiation of a fact that, when weighed against the evidence opposing the fact, is more convincing and has a greater probability of truth.

History: (4337-21) Ex1936 c 2 s 1; 1989 c 209 art 2 s 1; 1994 c 488 s 1; 1997 c 7 art 1 s 105; 1998 c 265 s 3

268.035 DEFINITIONS.

Subdivision 1. Scope. Unless the language or context clearly indicates that a different meaning is intended, the words, terms, and phrases in this section shall, for the purposes of sections 268.03 to 268.23, have the meaning stated.

Subd. 2. Agricultural employment. "Agricultural employment" means services:

(1) on a farm, in the employ of any person or family farm corporation in connection with cultivating the soil, or in connection with raising or harvesting any agricultural or horticultural commodity, including the raising, shearing, feeding, caring for, training, and management of livestock, bees, poultry, fur-bearing animals, and wildlife;

(2) in the employ of the owner or tenant or other operator of a farm, in connection with the operation, management, conservation, improvement, or maintenance of the farm and its tools and equipment, or in salvaging timber or clearing land of brush and other debris left by a tornado-like storm, if the major part of the employment is performed on a farm;

(3) in connection with the production or harvesting of any commodity defined as an agricultural product in United States Code, title 7, section 1626 of the Agricultural Marketing Act, or in connection with cotton ginning, or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways, not owned or operated for profit, used exclusively for supplying and storing water for farming purposes;

(4) in the employ of the operator of a farm in handling, planting, drying, packing, packaging, processing, freezing, grading, storing, or delivering to storage or to market or to a carrier for transportation to market, in its unmanufactured state, any agricultural or horticultural commodity; but only if the operator produced more than one-half of the commodity with respect to which the employment is performed, or in the employ of a group of operators of farms or a cooperative organization of which the operators are members, but only if the operators produced more than one-half of the commodity with respect to which the employment is performed; however, this clause shall not be applicable to employment performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption; or

(5) on a farm operated for profit if the employment is not in the course of the employer's trade or business.

For purposes of this subdivision, the term "farm" includes stock, dairy, poultry, fruit, fur-bearing animals, and truck farms, plantations, ranches, nurseries, orchards, ranges, greenhouses, or other similar structures used primarily for the raising of agricultural or horticultural commodities.

Subd. 3. Back pay. "Back pay" means a retroactive payment of money by an employer to an employee or former employee for lost wages because of the employer's noncompliance with a state or federal law or a collective bargaining agreement as determined by an arbitration award, administrative or judicial decision, or negotiated settlement. The payment shall be applied to the period immediately following the last day of employment or as specified in the award, decision, or settlement.

Subd. 4. Base period. "Base period" means:

(1) the first four of the last five completed calendar quarters immediately prior to the effective date of a claimant's reemployment insurance account;

(2) if during the base period under clause (1) a claimant received workers' compensation for temporary disability under chapter 176 or a similar law of the United States, or if a claimant whose own serious illness caused a loss of work for which the claimant received compensation for loss of wages from some other source, the claimant may request that the base period be extended as follows:

(i) if a claimant was compensated for a loss of work of seven to 13 weeks, the original base period shall be extended to include the one calendar quarter prior to the original base period;

(ii) if a claimant was compensated for a loss of work of 14 to 26 weeks, the original base period shall be extended to include the two calendar quarters prior to the original base period;

(iii) if a claimant was compensated for a loss of work of 27 to 39 weeks, the original base period shall be extended to include the three calendar quarters prior to the original base period; and

(iv) if a claimant was compensated for a loss of work of 40 to 52 weeks, the original base period shall be extended to include the four quarters prior to the original base period;

(3) if the claimant qualifies for an extended base period under clause (2), but has insufficient wage credits to establish a reemployment insurance account, the claimant may request an alternate base period of the last four completed calendar quarters prior to the date the claimant's reemployment insurance account is effective. This alternate base period may be used only once during any five-calendar-year period; and

(4) no base period under clause (1), extended base period under clause (2), or alternate base period under clause (3) shall include wage credits upon which a prior reemployment insurance account was established.

Subd. 5. Benefits. "Benefits" means the money payments payable to a claimant, as provided in sections 268.03 to 268.23, with respect to the claimant's unemployment.

Subd. 6. Benefit year. "Benefit year" means the period of 52 calendar weeks beginning the date a reemployment insurance account is effective. For a reemployment insurance account established effective January 1, April 1, July 1, or October 1, the benefit year will be a period of 53 calendar weeks.

Subd. 7. Calendar quarter. "Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

Subd. 8. Claimant. "Claimant" means an individual who has made an application for a reemployment insurance account and has established or is actively pursuing the establishment of a reemployment insurance account.

Subd. 9. Construction/independent contractor. A worker doing commercial or residential building construction or improvement, in the public or private sector, performing services in the course of the trade, business, profession, or occupation of the employer, shall be considered an employee and not an "independent contractor" unless the worker meets all the following conditions:

(1) maintains a separate business with the independent contractor's own office, equipment, materials, and other facilities;

(2) holds or has applied for a federal employer identification number;

(3) operates under contracts to perform specific services or work for specific amounts of money under which the independent contractor controls the means of performing the services or work;

(4) incurs the main expenses related to the service or work that the independent contractor performs under contract;

(5) is responsible for the satisfactory completion of work or services that the independent contractor contracts to perform and is liable for a failure to complete the work or service;

(6) receives compensation for work or service performed under a contract on a commission or per job or competitive bid basis and not on any other basis;

(7) may realize a profit or suffer a loss under contracts to perform work or service;

(8) has continuing or recurring business liabilities or obligations; and

(9) the success or failure of the independent contractor's business depends on the relationship of business receipts to expenditures.

Subd. 10. Corporation. "Corporation" includes associations, joint-stock companies, and insurance companies. This definition shall not be exclusive.

Subd. 11. Covered agricultural employment. "Covered agricultural employment" means agricultural employment where:

(1) The employment is performed for a person who:

(i) during any calendar quarter in either the current or the prior calendar year paid wages of \$20,000 or more to employees in agricultural employment; or

(ii) for some portion of a day in each of 20 different calendar weeks, whether or not the weeks were consecutive, in either the current or prior calendar year employed in agricultural

employment four or more employees, regardless of whether they were employed at the same time.

(2) Any employee who is a member of a crew furnished by a crew leader to be employed in agricultural employment for any other person shall be treated as an employee of the crew leader:

(i) if the crew leader holds a valid certificate of registration under United States Code, title 29, section 1802, the Migrant and Seasonal Agricultural Worker Protection Act; or substantially all of the members of the crew operate or maintain tractors, mechanized harvesting or crop dusting equipment, or any other mechanized equipment, that is provided by the crew leader; and

(ii) if the employee is not an employee of another person.

(3) Any employee who is furnished by a crew leader to be employed in agricultural employment for any other person and who is not treated as an employee of the crew leader under clause (2):

(i) the other person and not the crew leader shall be treated as the employer of the employee; and

(ii) the other person shall be treated as having paid wages to the employee in an amount equal to the amount of wages paid to the employee by the crew leader (either on the crew leader's behalf or on behalf of the other person) for the agricultural employment performed for the other person.

(4) The term "crew leader" means an individual who:

(i) furnishes employees to be employed in agricultural employment for any other person;

(ii) pays (either on the crew leader's own behalf or on behalf of the other person) the employees furnished by the crew leader for the agricultural employment performed by them; and

(iii) has not entered into a written agreement with the other person under which the furnished employee is designated as an employee of the other person.

(5) Employment of an officer or shareholder of a family farm corporation shall be excluded from covered agricultural employment unless the corporation is an employer under United States Code, title 26, section 3306(a)(2) of the Federal Unemployment Tax Act.

(6) Employment of an individual 16 years of age or under shall be excluded from covered agricultural employment unless the employer is an employer under United States Code, title 26, section 3306(a)(2) of the Federal Unemployment Tax Act.

Subd. 12. Covered employment. "Covered employment" means the following unless defined as "noncovered employment" under subdivision 20:

(1) an employee's entire employment if:

(i) the employment is performed entirely in Minnesota;

(ii) the employment is performed primarily in Minnesota, and the employment performed outside Minnesota is incidental to the employment in Minnesota; or

(iii) the employment is not performed primarily in any one state but some of the employment is performed in Minnesota and the base of operations or the place from which the employment is directed or controlled is in Minnesota; or the base of operations or place from which the employment is directed or controlled is not in any state in which part of the employment is performed, but the employee's residence is in Minnesota;

(2) an employee's employment wherever performed within the United States or Canada, if:

(i) the employment is not covered under the reemployment insurance law of any other state or Canada; and

(ii) the place from which the employment is directed or controlled is in Minnesota;

(3) the employment of an employee who is a citizen of the United States, performed outside the United States, except in Canada, in the employ of an American employer if:

(i) the employer's principal place of business in the United States is located in Minnesota;

(ii) the employer has no place of business in the United States, but the employer is an individual who is a resident of Minnesota, or the employer is a corporation that is organized under the laws of Minnesota, or the employer is a partnership or a trust and the number of partners or trustees who are residents of Minnesota is greater than the number who are residents of any one other state;

(iii) none of the criteria of subclauses (i) and (ii) is met but the employer has elected coverage in Minnesota, or the employer having failed to elect coverage in any state, a claimant has made an application for benefits under section 268.07, based on the employment;

(iv) an "American employer," for the purposes of this subdivision, means an individual who is a resident of the United States, or a partnership if two-thirds or more of the partners are residents of the United States, or a trust, if all of the trustees are residents of the United States, or a corporation organized under the laws of the United States, or of any state; or

(v) as used in this subdivision, the term "United States" includes the states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands;

(4) all employment performed by an officer or member of the crew of an American vessel on or in connection with the vessel, if the operating office, from which the operations of the vessel operating on navigable waters within, or within and without, the United States are ordinarily and regularly supervised, managed, directed, and controlled is in Minnesota;

(5) for the purposes of satisfying disqualifications under section 268.095, subdivision 10, "covered employment" shall include covered employment under a similar law of any other state or employment covered under a reemployment insurance system established by an act of Congress; and

(6) periods for which an individual receives back pay are periods of "covered employment," except for the satisfying of disqualifications under section 268.095, subdivision 10.

Subd. 13. Employee. "Employee" means every individual, who is performing, or has performed services for an employer in employment.

Subd. 14. Employer. "Employer" means any of the following which has had one or more employees during the current or the prior calendar year:

(1) any individual or type of organization, resident or nonresident, for profit or nonprofit, religious, charitable, or educational, including any partnership, limited liability company, trust, estate, or corporation, domestic or foreign, or the receiver, trustee in bankruptcy, trustee or successor of any of the foregoing, or the legal representative of a deceased person;

(2) any government entity, state or federal, foreign or domestic, Indian tribe, including any subdivision thereof and any instrumentality thereof owned wholly or in part;

(3) any organization or person that is considered an employer under United States Code, title 26, section 3306(a) of the Federal Unemployment Tax Act;

(4) any organization or person that has elected, under section 268.042, to be subject to sections 268.03 to 268.23;

(5) a joint venture composed of one or more employers;

(6) any private or nonprofit organization or government agency providing or authorizing the hiring of homeworkers, personal care attendants, or other individuals performing similar services in a private home is the employer of the homemaker, attendant, or similar worker whether the agency pays the employee directly or provides funds to the recipient of the services to pay for the services. This clause does not apply to the state of Minnesota or any county that provides federal, state, or local funds to a child care provider either directly or indirectly through a parent who is a child care assistance recipient; or

(7) each individual employed to perform or assist in performing the work of any agent or employee shall be considered to be employed by that employer whether the individual was hired or paid directly by that employer or by the agent or employee, provided the employer had actual or constructive knowledge of the work.

Subd. 15. Employment. "Employment" means service performed by:

(1) an individual who is considered an employee under the common law of employer-employee and not considered an independent contractor;

(2) an officer of a corporation;

(3) a member of a limited liability company who is considered an employee under the common law of employer–employee;

(4) an individual who performs services for compensation, as:

(i) an agent–driver or commission–driver engaged in distributing meat products, vegetable products, fruit products, beverages, or laundry or dry cleaning services, for a principal; or

(ii) a traveling or city salesperson, other than as an agent–driver or commission–driver, engaged upon a full–time basis in the solicitation on behalf of, and the transmission to, a principal (except for sideline sales activities on behalf of some other person) of orders from wholesalers, retailers, contractors, or operators of hotels, restaurants, or other similar establishments for merchandise for resale or supplies for use in their business operations.

This clause shall apply only if the contract of service provides that substantially all of the services are to be performed personally by the individual, and the services are part of a continuing relationship with the person for whom the services are performed, and the individual does not have a substantial investment in facilities used in connection with the performance of the services (other than facilities for transportation); or

(5) an individual whose service is considered employment under United States Code, title 26, section 3306(c), of the Federal Unemployment Tax Act.

Subd. 16. Family farm corporation. “Family farm corporation” has the meaning given to it in section 500.24, subdivision 2.

Subd. 17. Filing; filed. “Filing” or “filed” means the delivery of any document to the commissioner or any of the commissioner’s agents, or the depositing of the document in the United States mail properly addressed to the department with postage prepaid, in which case the document shall be considered filed on the day indicated by the cancellation mark of the United States Postal Service.

If, where allowed, an application, protest, appeal, or other required action is made by telephone or electronic transmission, it shall be considered filed on the day received by the department.

Subd. 18. Fund. “Fund” means the Minnesota reemployment insurance fund established by section 268.194.

Subd. 19. High quarter. “High quarter” means the calendar quarter in a claimant’s base period with the highest amount of wage credits.

Subd. 20. Noncovered employment. “Noncovered employment” means:

(1) employment for the United States government or an instrumentality thereof;

(2) employment for an Indian, an Indian–controlled employer, and Indian tribe, or any wholly controlled subsidiaries or subdivisions, if the employment is performed on an Indian reservation or Indian Trust Land;

(3) employment for a state, other than Minnesota, or a political subdivision or instrumentality thereof;

(4) employment for a foreign government;

(5) employment for an instrumentality wholly owned by a foreign government, if the employment is of a character similar to that performed in foreign countries by employees of the United States government or an instrumentality thereof and the United States Secretary of State has certified that the foreign government grants an equivalent exemption to similar employment performed in the foreign country by employees of the United States government and instrumentalities thereof;

(6) employment with respect to which reemployment insurance benefits are payable under a system established by an act of Congress;

(7) employment covered by a reciprocal arrangement between the commissioner and another state or the federal government pursuant to which all employment performed by an individual for an employer during the period covered by the reciprocal arrangement is considered performed entirely within another state;

(8) employment for a religious, charitable, education, or other organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and ex-

empt from income tax under section 501(a), but only if the organization did not have one or more individuals in employment for some portion of a day in each of 20 different weeks, whether or not such weeks were consecutive, within either the current or the prior calendar year, regardless of whether they were employed at the same time;

(9) employment for a church or convention or association of churches, or an organization operated primarily for religious purposes that is operated, supervised, controlled, or principally supported by a church or convention or association of churches described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt from income tax under section 501(a);

(10) employment of a duly ordained, commissioned, or licensed minister of a church in the exercise of a ministry or by a member of a religious order in the exercise of duties required by the order, for Minnesota or a political subdivision or an organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt from income tax under section 501(a);

(11) employment of an individual receiving rehabilitation of "sheltered" work in a facility conducted for the purpose of carrying out a program of rehabilitation for individuals whose earning capacity is impaired by age or physical or mental deficiency or injury or a program providing "sheltered" work for individuals who because of an impaired physical or mental capacity cannot be readily absorbed in the competitive labor market. This clause applies only to services performed for Minnesota or a political subdivision or an organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt from income tax under section 501(a) in a facility certified by the rehabilitation services branch of the department or in a day training or habilitation program licensed by the department of human services;

(12) employment of an individual receiving work relief or work training as part of an unemployment work relief or work training program assisted or financed in whole or in part by any federal agency or an agency of a state or political subdivision thereof. This clause applies only to employment for Minnesota or a political subdivision or an organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code and exempt from income tax under section 501(a). This clause shall not apply to programs that require reemployment insurance coverage for the participants;

(13) employment in any calendar quarter for any organization exempt from income tax under United States Code, title 26, section 501(a) or 521 of the federal Internal Revenue Code except a trust described in section 401(a), if the compensation for the employment is less than \$50;

(14) employment for Minnesota or a political subdivision if the service is as an elected official, a member of a legislative body, or a member of the judiciary;

(15) employment as a member of the Minnesota national guard or air national guard;

(16) employment for Minnesota, a political subdivision, or instrumentality thereof, as an employee serving only on a temporary basis in case of fire, storm, snow, earthquake, flood, or similar emergency;

(17) employment as an election official or election worker for Minnesota or a political subdivision, but only if the compensation for that employment was less than \$1,000 in a calendar year;

(18) employment for Minnesota that is a major nontenured policy making or advisory position in the unclassified service;

(19) employment in a policy making position for Minnesota or a political subdivision, the performance of the duties that ordinarily does not require more than eight hours per week;

(20) employment for a political subdivision of Minnesota that is a major nontenured policy making or advisory position;

(21) domestic service in a private household, local college club, or local chapter of a college fraternity or sorority performed for a person, only if the wages paid in any calendar quarter in either the current or preceding calendar year to all individuals employed in domestic service totaled less than \$1,000.

"Domestic service" includes all service for an individual in the operation and maintenance of a private household, for a local college club, or local chapter of a college fraternity

or sorority as distinguished from service as an employee in the pursuit of an employer's trade, occupation, profession, enterprise, or vocation;

(22) employment of an individual by a son, daughter, or spouse, and employment of a child under the age of 18 by the child's father or mother;

(23) employment of an inmate of a custodial or penal institution;

(24) employment for a school, college, or university by a student who is enrolled and is regularly attending classes at the school, college, or university;

(25) employment of an individual who is enrolled as a student in a full-time program at a nonprofit or public educational institution that normally maintains a regular faculty and curriculum and normally has a regularly organized body of students in attendance at the place where its educational activities are carried on, taken for credit at the institution, that combines academic instruction with work experience, if the employment is an integral part of the program, and the institution has so certified to the employer, except that this clause shall not apply to employment in a program established for or on behalf of an employer or group of employers;

(26) employment of university, college, or professional school students in an internship or other training program with the city of St. Paul or the city of Minneapolis pursuant to Laws 1990, chapter 570, article 6, section 3;

(27) employment for a hospital by a patient of the hospital. "Hospital" means an institution that has been licensed, certified, or approved by the department of health as a hospital;

(28) employment as a student nurse for a hospital or a nurses' training school by an individual who is enrolled and is regularly attending classes in a nurses' training school chartered and approved pursuant to state law;

(29) employment as an intern for a hospital by an individual who has completed a four-year course in a medical school chartered and approved pursuant to state law;

(30) employment as an insurance agent or as an insurance solicitor, by other than a corporate officer, if all the compensation for the employment is solely by way of commission. The word "insurance" shall include an annuity and an optional annuity;

(31) employment as an officer of a township mutual insurance company or farmer's mutual insurance company operating pursuant to chapter 67A;

(32) employment as a real estate salesperson, by other than a corporate officer, if all the compensation for the employment is solely by way of commission;

(33) employment as a direct seller as defined in United States Code, title 26, section 3508;

(34) employment of an individual under the age of 18 in the delivery or distribution of newspapers or shopping news, not including delivery or distribution to any point for subsequent delivery or distribution;

(35) casual labor not in the course of the employer's trade or business;

(36) employment in "agricultural employment" unless considered "covered agricultural employment" under subdivision 11; or

(37) if the employment during one-half or more of any pay period constitutes covered employment, all the employment for the period shall be considered covered employment; but if the employment performed during more than one-half of any pay period does not constitute covered employment, then none of the employment for the period shall be considered covered employment. "Pay period" means a period of not more than a calendar month for which a payment or compensation is ordinarily made to the employee by the employer.

Subd. 21. **Person.** "Person" means an individual, trust or estate, a partnership or a corporation.

Subd. 22. **State.** "State" includes, in addition to the states of the United States, the Commonwealth of Puerto Rico, the District of Columbia, and the Virgin Islands.

Subd. 23. **State's average annual and average weekly wage.** (a) On or before June 30 of each year, the commissioner shall calculate the state's average annual wage and the state's average weekly wage in the following manner:

(1) The sum of the total monthly covered employment reported by all employers for the prior calendar year shall be divided by 12 to calculate the average monthly covered employment.

(2) The sum of the total wages paid for all covered employment reported by all employers for the prior calendar year shall be divided by the average monthly covered employment to calculate the state's average annual wage.

(3) The state's average annual wage shall be divided by 52 to calculate the state's average weekly wage.

(b) For purposes of calculating the amount of taxable wages, the state's average annual wage shall apply to the calendar year following the calculation.

(c) For purposes of calculating the state's maximum weekly benefit amount payable on any reemployment insurance account, the state's average weekly wage shall apply to the 12-month period beginning August 1 of the calendar year of the calculation.

Subd. 24. Taxable wages. (a) "Taxable wages" means those wages paid to an employee in covered employment each calendar year up to an amount equal to 60 percent of the state's average annual wage, rounded to the nearest \$100.

(b) Taxable wages includes the amount of wages paid for covered employment by the employer's predecessor in this state or under the reemployment insurance law of any other state. Any credit given for amounts reported under the reemployment insurance law of another state shall be limited to that state's taxable wage base.

Subd. 25. Taxes. "Taxes" means the money payments required by sections 268.03 to 268.23 to be paid into the fund by an employer on account of paying wages to employees in covered employment.

Subd. 26. Unemployed. A claimant shall be considered "unemployed": (1) in any week that the claimant performs no service in employment, covered employment, noncovered employment, self-employment, or volunteer work, and with respect to which the claimant has no earnings; or (2) in any week of less than 32 hours of service in employment, covered employment, noncovered employment, self-employment, or volunteer work if the earnings with respect to that week are less than the claimant's weekly benefit amount.

Subd. 27. Wage credits. "Wage credits" mean the amount of wages paid within a claimant's base period for covered employment.

Subd. 28. Wage detail report. "Wage detail report" means the report of wages paid and hours worked by each employee in covered employment on a calendar quarter basis. An auxiliary report broken down by business locations, when required by the commissioner, shall contain the number of employees in covered employment for each month, and the quarterly total wages for each location. The auxiliary report may be made part of the wage detail report, the tax report, or filed separately, as required by the commissioner.

Subd. 29. Wages. "Wages" means all compensation for services, including commissions; bonuses; severance payments; vacation and holiday pay; back pay as of the date of payment; tips and gratuities paid to an employee by a customer of an employer and accounted for by the employee to the employer; sickness and accident disability payments, except as otherwise provided in this subdivision; and the cash value of all compensation in any medium other than cash, except:

(1) the amount of any payment made to, or on behalf of, an employee under a plan established by an employer that makes provision for employees generally or for a class or classes of employees, including any amount paid by an employer for insurance or annuities, or into a plan, to provide for a payment, on account of (i) retirement or (ii) medical and hospitalization expenses in connection with sickness or accident disability, or (iii) death;

(2) the payment by an employer of the tax imposed upon an employee under United States Code, title 26, section 3101 of the Federal Insurance Contribution Act, with respect to compensation paid to an employee for domestic service in a private household of the employer or for agricultural employment;

(3) any payment made to, or on behalf of, an employee or beneficiary (i) from or to a trust described in United States Code, title 26, section 401(a) of the federal Internal Revenue Code, that is exempt from tax under section 501(a) at the time of the payment unless the pay-

ment is made to an employee of the trust as compensation for services as an employee and not as a beneficiary of the trust, or (ii) under or to an annuity plan that, at the time of the payment, is a plan described in section 403(a);

(4) sickness or accident disability payments made by the employer after the expiration of six calendar months following the last calendar month that the individual worked for the employer;

(5) disability payments made under the provisions of any workers' compensation law;

(6) sickness or accident disability payments made by a third party payer such as an insurance company;

(7) payments made into a fund, or for the purchase of insurance or an annuity, to provide for sickness or accident disability payments to employees pursuant to a plan or system established by the employer that provides for the employer's employees generally or for a class or classes of employees; or

(8) nothing in this subdivision shall exclude from the term "wages" any payment made under any type of salary reduction agreement, including payments made under a cash or deferred arrangement and cafeteria plan, as defined in United States Code, title 26, sections 401(k) and 125 of the federal Internal Revenue Code, to the extent that the employee has the option to receive the payment in cash.

Subd. 30. Wages paid. "Wages paid" means the amount of wages which have been actually paid or which have been credited to or set apart for the employee so that payment and disposition is under the control of the employee. Wage payments delayed beyond their regularly scheduled pay date are considered "actually paid" on the missed pay date. Any wages earned but not paid with no scheduled date of payment shall be considered "actually paid" on the last day services are performed in employment before separation.

Wages paid shall not include wages earned but not paid except as provided for in this subdivision.

Subd. 31. Week. "Week" means calendar week, ending at midnight Saturday.

Subd. 32. Weekly benefit amount. "Weekly benefit amount" means the amount of benefits computed under section 268.07, that a claimant would be entitled to receive for a week, if totally unemployed and eligible.

History: 1998 c 265 s 4

268.04 [Repealed, 1998 c 265 s 46]

268.041 [Renumbered 268.043]

268.042 EMPLOYERS COVERAGE.

Subdivision 1. Employer for part of year. Except as provided in subdivision 3, any organization or person that is or becomes an employer subject to sections 268.03 to 268.23 within any calendar year shall be considered to be an employer during the entire calendar year.

Subd. 2. [Repealed, 1998 c 265 s 46]

Subd. 3. Election agreements; termination powers of commissioner. (a) An organization or person, not defined as an employer, that files with the commissioner a written election to become an employer, shall, with the written approval of the commissioner, become an employer for not less than two calendar years to the same extent as all other employers, as of the date stated in the approval. The organization or person shall cease to be an employer as of the first day of January of any calendar year, only, if at least 30 calendar days prior to the first day of January, the organization or person has filed with the commissioner a written notice to that effect.

(b) Any employer that has services performed for it that do not constitute employment and covered employment, may file with the commissioner a written election that all such service, in one or more distinct establishments or places of business, shall be considered covered employment for not less than two calendar years. Upon the written approval of the commissioner, the services shall constitute covered employment from and after the date stated in the approval. The services shall cease to be considered covered employment as of the first day of

January of any calendar year only if at least 30 calendar days prior to the first day of January the employer has filed with the commissioner a written notice to that effect.

(c) The commissioner must terminate any election agreement under this subdivision upon 30 calendar days' notice, if the employer fails to pay all taxes due or payments in lieu of taxes due the fund.

Subd. 4. Authorization. The commissioner is authorized to enter into reciprocal arrangements with other states and the federal government, or both, whereby employment by an employee or employees for a single employer that is customarily performed in more than one state shall be considered performed entirely within any one of the states:

(1) where any part of the employee's employment is performed, or

(2) where the employee has a residence, or

(3) where the employer maintains a place of business; provided, there is in effect, as to the employment, an election, approved by the state, pursuant to which all the employment by the employee or employees for the employer is considered to be performed entirely within that state.

History: *Ex1936 c 2 s 9,11; 1937 c 306 s 6,8; 1939 c 443 s 9; 1941 c 554 s 8,10; 1943 c 650 s 8; 1945 c 376 s 8,10; 1947 c 432 s 8-10; 1947 c 600 s 2; 1949 c 605 s 10; 1953 c 97 s 13,14; 1965 c 45 s 41,45; 1969 c 9 s 64; 1969 c 854 s 9,10; 1971 c 942 s 13; 1979 c 181 s 16; 1983 c 372 s 35,36; 1986 c 444; 1989 c 209 art 2 s 1; 1996 c 417 s 31; 1997 c 66 s 61,79; 1998 c 265 s 5,6,33-35,45*

268.043 DETERMINATIONS OF COVERAGE.

(a) The commissioner, upon the commissioner's own motion or upon application of an organization or person, shall determine if that organization or person is an employer or whether services performed for it constitute employment and covered employment, or whether the compensation for services constitutes wages, and shall notify the organization or person of the determination. The determination shall be final unless the organization or person, within 30 calendar days after sending of the determination by mail or electronic transmission, files an appeal. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) The commissioner may at any time upon the commissioner's own motion correct any error of the department resulting in an erroneous determination under this section. A corrected determination shall be final unless, within 30 calendar days after sending of the corrected determination to the organization or person by mail or electronic transmission, an appeal is filed. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(c) No organization or person shall be initially determined an employer, or that services performed for it were in employment or covered employment, for periods more than four years prior to the year in which the determination is made, unless the commissioner finds that there was fraudulent action to avoid liability under this chapter.

History: *1995 c 54 s 2; 1996 c 417 s 4; 1997 c 66 s 79; 1998 c 265 s 7*

268.044 WAGE REPORTING.

Subdivision 1. Wage detail report. (a) Each employer that has employees in covered employment shall provide the commissioner with a quarterly wage detail report. The report shall include for each employee in covered employment, the employee's name, social security number, the total wages paid to the employee, and total number of paid hours worked. For employees exempt from the definition of employee in section 177.23, subdivision 7, clause (6), the employer shall report 40 hours worked for each week any duties were performed by a full-time employee and shall report a reasonable estimate of the hours worked for each week duties were performed by a part-time employee. The report is due and must be filed on or before the last day of the month following the end of the calendar quarter.

(b) The employer may report the wages paid to the nearest whole dollar amount.

(c) An employer need not include the name of the employee or other required information on the wage detail report if disclosure is specifically exempted by federal law.

Subd. 2. Failure to file report. Any employer who fails to file the wage detail report shall pay to the department, for each month the report is delinquent, a penalty of one-half of one percent of total wages paid that quarter. The penalty shall not be assessed if the wage detail report is properly made and filed within 30 calendar days after a demand for the report is mailed to the employer's address of record. In no case shall the amount of the penalty, if assessed, be less than \$25. Penalties due under this subdivision may be waived where good cause for late filing is found by the commissioner.

Subd. 3. Missing or erroneous information. Any employer who files the wage detail report, but knowingly fails to include any of the required information or knowingly enters erroneous information, shall be subject to a penalty of \$25 for each employee for whom the information is missing or erroneous.

Subd. 4. Penalties. The penalties provided for in subdivisions 2 and 3 are in addition to interest and other penalties imposed by this chapter and shall be collected in the same manner as delinquent taxes and shall be credited to the contingent account.

History: *1Sp1982 c 1 s 42; 1986 c 444; 1987 c 362 s 24; 1987 c 370 art 2 s 16; 1987 c 385 s 26; 1997 c 66 s 79,80; 1997 c 74 s 1; 1Sp1997 c 5 s 7; 1998 c 265 s 8*

NOTE: Subdivision 1 was also amended by Laws 1997, chapter 66, section 64, to read as follows:

"Subdivision 1. **Wage detail report.** (a) Each employer subject to this chapter shall provide the commissioner with a quarterly report known as the wage detail report, that shall include, for each employee covered by this chapter, the employee's name, social security number, and the total wages paid to the employee. The report is due and must be filed on or before the last day of the month following the end of the calendar quarter.

(b) An employer need not include the name of the employee or other required information on the wage detail report if disclosure is specifically exempted by federal law."

268.045 EMPLOYER ACCOUNTS.

(a) The commissioner shall maintain a separate account for each employer that has employees in covered employment in the current or the prior calendar year, except as provided in this section, and shall charge the account for any benefits determined chargeable to the employer under section 268.047 and shall credit the account with all the taxes paid, or if the employer is liable for payments in lieu of taxes, the payments made.

(b) Two or more related corporations concurrently employing the same employees and compensating those employees through a common paymaster that is one of the corporations may apply to the commissioner to establish a common paymaster account that shall be the account of the common paymaster corporation. If approved, the separate accounts shall be maintained, but the employees compensated through the common paymaster shall be reported as employees of the common paymaster corporation. The corporations using the common paymaster account shall be jointly and severally liable for any unpaid taxes, penalties, and interest owing from the common paymaster account.

(c) Two or more employers having 50 percent or more common ownership and compensating employees through a single payer that is one of the employers may apply to the commissioner for a merging of the experience rating records of the employers into a single joint account.

If approved, the joint account shall be effective on that date assigned by the commissioner and shall remain in effect for not less than two calendar years, and continuing unless written notice terminating the joint account is filed with the commissioner. The termination shall be effective on January 1 next following the filing of the written notice of termination.

The employers in the joint account shall be jointly and severally liable for any unpaid taxes, penalties, and interest owing from the joint account.

(d) Two or more employers that are liable for payments in lieu of taxes may apply to the commissioner for the establishment of a group account for the purpose of sharing the cost of benefits charged based upon wage credits from all employers in the group. The application shall identify and authorize a group representative to act as the group's agent for the purposes of the account. If approved, the commissioner shall establish a group account for the employers effective as of the beginning of the calendar year that the application is received. The account shall remain in effect for not less than two calendar years and thereafter until terminated at the discretion of the commissioner or upon application by the group at least 30 calen-

dar days prior to the end of the two year period or 30 calendar days prior to January 1 of any following calendar year. Each employer in the group shall be jointly and severally liable for payments in lieu of taxes for all benefits paid based upon wage credits from all employers in the group during the period the group account was in effect.

History: *Ex*1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5,11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6,17,18; 1951 c 442 s 2; 1953 c 97 s 5,6,8; 1953 c 288 s 1; 1955 c 380 s 2-4,6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 430 s 25.subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c 1 s 5-12; 1983 c 216 art 1 s 87; 1983 c 247 s 112; 1983 c 372 s 9-15; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1986 c 451 s 1; 1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18; 1989 c 65 s 3-5; 1989 c 209 art 2 s 1; 1992 c 484 s 4-7; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3-7; 1996 c 417 s 5-7,31; 1997 c 66 s 19,26,79; 1998 c 265 s 9

268.047 BENEFITS CHARGED TO EMPLOYER.

Subdivision 1. **General rule.** Benefits paid to a claimant pursuant to a reemployment insurance account, including extended, additional, and shared work benefits, shall be charged to the account of the claimant's base period employer as and when paid except as provided in subdivisions 2 and 3. The amount of benefits chargeable to each base period employer's account shall bear the same ratio to the total benefits paid to a claimant as the wage credits the claimant was paid by the employer bear to the total amount of wage credits the claimant was paid by all the claimant's base period employers.

In making computations under this subdivision, the amount of wage credits, if not a multiple of \$1, shall be computed to the nearest multiple of \$1.

Subd. 2. **Exceptions to charges for all employers.** Benefits paid to a claimant shall not be charged to the account of a taxpaying base period employer or to the account of a base period employer that is liable for payments in lieu of taxes under the following conditions:

(1) the claimant was discharged from the employment because of gross misconduct as determined under section 268.095. This clause shall apply only to benefits paid for weeks after the claimant's discharge from employment; or

(2) a claimant's discharge from that employment was required by a law mandating a background check, or the claimant's discharge from that employment was required by law because of a criminal conviction; or

(3) the employer:

(i) provided regularly scheduled part-time employment to the claimant during the claimant's base period;

(ii) during the claimant's benefit year, continues to provide the claimant with regularly scheduled employment approximating 90 percent of the employment provided the claimant by that employer in the base period, or, for a fire department or firefighting corporation or operator of a life-support transportation service, continues to provide employment for a volunteer firefighter or a volunteer ambulance service personnel on the same basis that employment was provided in the base period; and

(iii) is an involved employer because of the claimant's loss of other employment. The exception to charges shall terminate effective the first week in the claimant's benefit year that the employer fails to meet the provisions of subclause (ii);

This clause shall apply to educational institution employers without consideration of the period between academic years or terms; or

(4) the claimant's unemployment from this employer was directly caused by a major natural disaster declared by the president, if the claimant would have been eligible for federal disaster unemployment assistance with respect to that unemployment but for the claimant's receipt of reemployment insurance benefits; or

(5) the claimant's unemployment from this employer was directly caused by the condemnation of property by a governmental agency, a fire, flood, or act of God where 70 per-

cent or more of the employees employed in the affected location became unemployed as a result and the employer substantially reopens its operations in that same area within 18 months. Benefits shall be charged to the employer where the unemployment is caused by the willful act of the employer or a person acting on behalf of the employer; or

(6) the benefits were paid by another state as a result of the transferring of wage credits under a combined wage arrangement provided for in section 268.131; or

(7) on a second reemployment insurance account established pursuant to section 268.07, subdivision 3, where the employer provided 90 percent or more of the wage credits in the claimant's prior base period and the claimant did not perform services for the employer during the second base period; or

(8) the claimant left or partially or totally lost employment because of a strike or other labor dispute at the claimant's primary place of employment if the employer was not a party to the strike or labor dispute; or

(9) the benefits were determined overpaid benefits under section 268.18.

Subd. 3. Exceptions to charges for taxpaying employers. Benefits paid to a claimant shall not be charged to the account of a taxpaying base period employer under the following conditions:

(1) the claimant's wage credits from that employer are less than \$500;

(2) the claimant quit the employment, unless it was determined under section 268.095, to have been because of a good reason caused by the employer. This clause shall apply only to benefits paid for periods after the claimant's quitting the employment;

(3) the employer discharged the claimant from employment because of misconduct as determined under section 268.095. This clause shall apply only to benefits paid for periods after the claimant's discharge from employment;

(4) the employer discharged the claimant from employment because of reasons resulting directly from the claimant's serious illness, that was determined not misconduct under section 268.095, provided the employer made a reasonable effort to retain the claimant in employment in spite of the claimant's serious illness; or

(5) the claimant avoided or failed to accept an offer from the employer of suitable reemployment, as determined under section 268.095, or avoided or failed to accept an offer of reemployment with substantially the same or better hourly wages and conditions of employment as were previously provided by that employer. This clause shall only apply to benefits paid for periods after the claimant's refusal or avoidance.

(6) the claimant was held not disqualified from benefits under section 268.095 solely because of the application of section 268.105, subdivision 3a, paragraph (d).

Subd. 4. Federal reimbursed benefits not charged. Notwithstanding subdivision 1, no employer's account shall be charged for benefits for which the reemployment insurance fund is reimbursed by the federal government.

Subd. 5. Notice of benefits charged. (a) The commissioner shall notify each employer quarterly by mail or electronic transmission of the benefits that have been charged to the employer's account. Unless a protest is filed in a manner prescribed by the commissioner within 30 calendar days from the date of sending of the notice, the charges set forth in the notice shall be final and shall not be subject to collateral attack by way of review of a tax rate notice, application for a credit adjustment or refund, or otherwise.

(b) Upon receipt of a protest, the commissioner shall review the charges on the notice and determine whether there has been an error in the charging of the employer's account. The commissioner shall either affirm or make a redetermination of the charges, and a notice of affirmation or redetermination shall be sent to the employer by mail or electronic transmission.

(c) The affirmation or redetermination shall be final unless the employer files an appeal within 30 calendar days after the date the affirmation or redetermination was sent. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(d) An employer may not collaterally attack, by way of a protest to a notice of benefits charged, any prior determination or decision holding that benefits shall be charged to the employer's account, that has become final.

(e) The commissioner may at any time upon the commissioner's own motion correct a clerical error that resulted in charges to an employer's account.

History: 1997 c 66 s 10,16,79; 1998 c 265 s 10-12

268.048 BENEFITS NOT CHARGED IN WELFARE-TO-WORK.

(a) The commissioner shall, prior to computing a tax rate, remove benefit charges from the account of a taxpaying employer if the claimant to whom those benefits were paid was:

(1) a primary wage earner who was a recipient of cash benefits under a Minnesota welfare program in the calendar quarter or immediately preceding calendar quarter that wages were first paid by that employer;

(2) paid wages by that employer in no more than two calendar quarters; and

(3) paid wages by that employer of less than \$3,000.

(b) This section shall only apply to benefit charges accruing after July 1, 1997.

(c) If the commissioner finds that an employer discharged the claimant, or engaged in the employment practice of discharging workers, in order to meet the requirements of paragraph (a), clauses (2) and (3), this section shall not apply. In addition, the employer's action shall constitute employer misconduct and the penalties under section 268.184 shall be assessed.

History: 1997 c 66 s 79,80; 1997 c 80 s 1

NOTE: This section, as added by Laws 1997, chapter 80, section 1, expires July 1, 1999. Laws 1997, chapter 80, section 3.

268.05 [Renumbered 268.194]

268.051 EMPLOYERS TAXES.

Subdivision 1. **Payments.** (a) Taxes shall accrue and become payable by each employer for each calendar year that the employer paid wages to employees in covered employment, except for:

(1) nonprofit corporations as provided in section 268.053; and

(2) the state of Minnesota and political subdivisions as provided in section 268.052.

Each employer shall pay taxes quarterly, at the employer's assigned tax rate, on the taxable wages paid to each employee. The taxes shall be paid to the fund on or before the last day of the month following the end of the calendar quarter.

(b) The tax may be paid in an amount to the nearest whole dollar.

(c) When the tax for any calendar quarter is less than \$1, the tax shall be disregarded.

Subd. 1a. **Tax reports.** (a) Every employer, except those making payments in lieu of taxes, shall submit a tax report on a form, or in a manner, prescribed by the commissioner on or before the last day of the month following the end of the calendar quarter, unless the employer meets the requirements for submitting tax reports annually under section 268.0511. An employer that fails to submit a tax report when due, or submits an incorrect tax report, shall be subject to section 268.057, subdivision 1.

(b) Each tax report shall include the total wages paid and the taxable wages paid that quarter, the amount of tax due, and any other information required by the commissioner.

(c) A tax report must be submitted for each calendar quarter even though no wages were paid or no tax is due.

Subd. 2. **Computation of tax rates.** (a) For each calendar year the commissioner shall compute the tax rate of each employer that qualifies for an experience rating by adding the minimum tax rate to the employer's experience rating.

(b) The minimum tax rate shall be six-tenths of one percent if the amount in the fund is less than \$200,000,000 on June 30 of the prior calendar year; or five-tenths of one percent if the fund is more than \$200,000,000 but less than \$225,000,000; or four-tenths of one percent if the fund is more than \$225,000,000 but less than \$250,000,000; or three-tenths of one percent if the fund is more than \$250,000,000 but less than \$275,000,000; or two-tenths of one percent if the fund is \$275,000,000 but less than \$300,000,000; or one-tenth of one percent if the fund is \$300,000,000 or more.

(c) For the purposes of this subdivision the fund shall not include any money advanced from the federal unemployment trust fund.

Subd. 3. Computation of an employer's experience rating. (a) For each calendar year, the commissioner shall compute an experience rating for an employer who has been subject to this chapter for at least the 12 calendar months prior to July 1 of the prior calendar year. The experience rating shall be the ratio obtained by dividing 1-1/4 times the total benefits charged to the employer's account during the period the employer has been subject to this chapter but not less than the 12 or more than the 60 calendar months ending on June 30 of the prior calendar year by the employer's total taxable payroll for the same period.

(b) For purposes of paragraph (a), only that taxable payroll upon which taxes have been paid on or before September 30 of the prior calendar year may be used in computing an employer's experience rating.

(c) The experience rating shall be computed to the nearest one-tenth of a percent, to a maximum of 8.9 percent.

Subd. 4. Experience rating record transfer. (a) When an employer acquires the organization, trade or business or substantially all the assets of another employer, and there is 25 percent or more common ownership, directly or indirectly, between the predecessor and successor, the experience rating record of the predecessor employer shall be transferred as of the date of acquisition to the successor employer for the purpose of computing a tax rate.

(b) When an employer acquires a distinct severable portion of the organization, trade, business, or assets that is less than substantially all of the employing enterprises of another employer, and there is 25 percent or more common ownership, directly or indirectly, between the predecessor and successor, the successor employer shall acquire the experience rating record attributable to the portion it acquired, and the predecessor employer shall retain the experience rating record attributable to the portion that it has retained, if (1) the successor makes a written request to apply for the transfer of the experience rating record attributable to the severable portion acquired from the predecessor within 180 calendar days from the date of acquisition, and (2) files an application within the time and in the manner prescribed by the commissioner that furnishes sufficient information to substantiate the severable portion and to assign the appropriate total and taxable wages and benefit charges to the successor for experience rating purposes.

(c) The term "common ownership" for purposes of this subdivision includes ownership by a spouse, parent, child, brother, sister, aunt, uncle, or first cousin, by birth or by marriage.

(d) If the successor employer under paragraphs (a) and (b) had an experience rating record at the time of the acquisition, the transferred record of the predecessor shall be combined with the successor's record for purposes of computing a tax rate.

(e) If there has been a transfer of an experience rating record under paragraph (a) or (b), employment with a predecessor employer shall not be considered to have been terminated if similar employment is offered by the successor employer and accepted by the employee.

(f) The commissioner, upon the commissioner's own motion or upon application of an employer shall determine if an employer is a successor within the meaning of this subdivision and shall send the determination to the employer by mail or electronic transmission. The determination shall be final unless an appeal is filed by the employer within 30 calendar days after the sending of the determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(g) The commissioner may, as the result of any determination or decision regarding succession or nonsuccession, recompute the tax rate of all employers affected by the determination or decision for any year, including the year of the acquisition and subsequent years, that is affected by the transfer or nontransfer of part or all of the experience rating record. This paragraph does not apply to rates that have become final before the filing of a written request to apply for the transfer of a severable portion of the experience rating record under paragraph (b).

(h) The experience rating record for purposes of this subdivision shall consist of those factors which make up an experience rating, without the 12-month minimum required under subdivision 3.

(i) If the commissioner finds that a transaction was done, in whole or in part, to avoid an experience rating record or the transfer of an experience rating record, the commissioner may transfer the experience rating record to an employer notwithstanding the requirements of paragraph (a).

Subd. 5. Tax rate for new employers. (a) Each employer that does not qualify for an experience rating, except employers in the construction industry, shall be assigned a tax rate the higher of (1) one percent, or (2) the state's average cost rate; to a maximum of 5-4/10 percent. For purposes of this paragraph, the state's average cost rate shall be computed annually and shall be derived by dividing the total amount of benefits paid during the 60 consecutive calendar months prior to July 1 of each year by the total taxable wages of all taxpaying employers during the same period. This rate shall be applicable for the calendar year following the computation date.

(b) Each employer in the construction industry that does not qualify for an experience rating shall be assigned a tax rate, the higher of (1) one percent, or (2) the state's average cost rate for construction employers to a maximum of 8.9 percent, plus the applicable minimum tax rate. For purposes of this paragraph, the state's average cost rate shall be computed annually and shall be derived by dividing the total amount of benefits paid to claimants of construction industry employers during the 60 consecutive calendar months prior to July 1 of each year by the total taxable wages of construction industry employers during the same period. This rate shall be applicable for the calendar year following the computation date.

An employer is considered in the construction industry if the employer is within division C of the Standard Industrial Classification Manual issued by the United States Office of Management and Budget, except as excluded by rules adopted by the commissioner.

Subd. 6. Notice of tax rate. (a) The commissioner shall notify each employer by mail or electronic transmission of the employer's tax rate as determined for any calendar year. The notice shall contain the tax rate and the factors used in determining the employer's experience rating. Unless a protest of the rate is made, the assigned rate shall be final except for fraud and shall be the rate at which taxes shall be paid. The tax rate shall not be subject to collateral attack by way of claim for a credit adjustment or refund, or otherwise.

(b) If the legislature, subsequent to the sending of the tax rate, changes any of the factors used to determine the rate, the earlier notice shall be void. A new tax rate based on the new factors shall be computed and sent to the employer.

(c) A review of an employer's tax rate may be obtained by the employer filing, in a manner prescribed by the commissioner, a protest within 30 calendar days from the date the tax rate notice was sent to the employer. Upon receipt of the protest, the commissioner shall review the tax rate to determine whether or not there has been any clerical error or error in computation. The commissioner shall either affirm or make a redetermination of the rate and a notice of the affirmation or redetermination shall be sent to the employer by mail or electronic transmission. The affirmation or redetermination shall be final unless the employer files an appeal within 30 calendar days after the date the affirmation or redetermination was sent. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(d) The commissioner may at any time upon the commissioner's own motion correct any error in the computation or the assignment of an employer's tax rate.

Subd. 7. Tax rate buydown. (a) Any employer who has been assigned a tax rate based upon an experience rating may, upon the voluntary payment of an amount equivalent to any portion or all of the benefits charged to the employer's account, plus a surcharge of 25 percent, obtain a cancellation of benefits charged to the account equal to the payment made, less the surcharge. Upon the payment, the commissioner shall compute a new experience rating for the employer, and determine a new tax rate.

(b) Voluntary payments may be made only during the 30 calendar day period immediately following the date of sending of the notice of tax rate. This period may be extended, upon a showing of good cause, but in no event shall a voluntary payment be allowed after 120 calendar days from the beginning of the calendar year for which the tax rate is effective.

(c) Voluntary payments made within the time required will not be refunded unless a request is made in writing within 30 calendar days after sending of the notice of the new tax rate.

Subd. 8. **Solvency assessment.** (a) If the fund balance is less than \$150,000,000 on June 30 of any year, a solvency assessment on taxpaying employers will be in effect for the following calendar year. The employer shall pay quarterly a solvency assessment of ten percent of the taxes due.

(b) The solvency assessment shall be placed into a special account from which the commissioner shall pay any interest accruing on any advance from the federal unemployment trust fund provided for under section 268.194, subdivision 6. If the commissioner determines that the balance in this special account is more than is necessary to pay the interest on any advance, the commissioner shall pay to the fund the amount in excess of that necessary to pay interest on any advance.

History: *Ex 1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5,11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6,17,18; 1951 c 442 s 2; 1953 c 97 s 5,6,8; 1953 c 288 s 1; 1955 c 380 s 2-4,6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 430 s 25 subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c 1 s 5-12; 1983 c 216 art 1 s 87; 1983 c 247 s 112; 1983 c 372 s 9-15; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1986 c 451 s 1; 1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18; 1989 c 65 s 3-5; 1989 c 209 art 2 s 1; 1992 c 484 s 4-7; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3-7; 1996 c 417 s 5-7,31; 1997 c 66 s 11-15,17,18,20,21,79; 1998 c 265 s 13*

268.0511 ANNUAL PAYMENT OF SMALL LIABILITIES.

(a) An employer may file tax reports and pay taxes and assessments for any calendar year on an annual basis if the employer:

- (1) has an experience rating of zero for that calendar year;
- (2) had total taxable wages paid in the 12-month period ending the prior June 30 of less than five times the state's taxable wage base; and
- (3) has no outstanding tax or assessment liability, including penalties and interest.

(b) Tax reports and taxes and assessments due under this section for any calendar year shall be paid on or before the following January 31.

History: *1997 c 66 s 80; 1997 c 80 s 2*

268.052 PAYMENT TO FUND BY STATE AND POLITICAL SUBDIVISIONS.

Subdivision 1. **Payments to fund by state and political subdivisions.** In lieu of taxes, the state of Minnesota or its political subdivisions shall pay into the reemployment insurance fund the amount of benefits charged to its account. Payments in the amount of benefits charged to the account during a calendar quarter shall be made on or before the last day of the month next following the month in which the notice of benefits charged is mailed to the employer. Past due payments shall be subject to the same interest charges and collection procedures that apply to past due taxes.

Subd. 2. **Election by state or political subdivision to be a taxpaying employer.** (a) The state or political subdivision may elect to be a taxpaying employer for any calendar year if a written notice of election is filed with the commissioner within 30 calendar days following January 1 of that calendar year.

An election shall be for a minimum period of two calendar years immediately following the effective date of the election and continue unless a written notice terminating the election is filed with the commissioner not later than 30 calendar days prior to the beginning of the calendar year. The termination shall be effective at the beginning of the next calendar year.

(b) The method of payments to the reemployment insurance fund shall apply to all contributions paid by or due from the state or political subdivision that elects to be taxpaying employers under this subdivision.

Subd. 3. **Method of payment by state to fund.** To discharge its obligations, the state and its wholly owned instrumentalities shall pay the reemployment insurance fund as follows:

(a) Every self-sustaining department, institution and wholly owned instrumentality of the state shall pay into the fund the amounts the commissioner shall certify has been paid from the fund that were charged to its account. For the purposes of this clause a "self-sustaining department, institution or wholly owned instrumentality" is one in which the dedicated income and revenue substantially offsets its cost of operation.

(b) Every partially self-sustaining department, institution and wholly owned instrumentality of the state shall pay into the fund the proportion of the sum that the commissioner certifies has been paid from the fund as the total of its income and revenue bears to its annual cost of operation.

(c) Every department, institution or wholly owned instrumentality of the state which is not self-sustaining shall pay to the fund the amount the commissioner certifies has been paid from the fund which were charged to their accounts to the extent funds are available from appropriated funds.

(d) The departments, institutions and wholly owned instrumentalities of the state, including the University of Minnesota, which have money available shall immediately pay the fund for benefits paid which were charged to their accounts upon receiving notification from the commissioner of the charges. If a claimant was paid by a department, institution or wholly owned instrumentality during the claimant's base period from a special or administrative account or fund provided by law, the payment into the fund shall be made from the special or administrative account or fund with the approval of the department of administration and the amounts are hereby appropriated.

(e) For those departments, institutions and wholly owned instrumentalities of the state which cannot immediately pay the fund for benefits that were charged to their accounts, the commissioner shall certify on November 1 of each calendar year to the department of finance the unpaid balances due and owing. Upon receipt of the certification the commissioner of the department of finance shall include the unpaid balances in the biennial budget submitted to the legislature.

Subd. 4. **Method of payment by political subdivision to fund.** A political subdivision or instrumentality thereof is authorized and directed to pay its obligations under this chapter by moneys collected from taxes or other revenues. Every political subdivision authorized to levy taxes may include in its tax levy the amount necessary to pay its obligations. If the taxes authorized to be levied under this subdivision cause the total amount of taxes levied to exceed any limitation upon the power of a political subdivision to levy taxes, the political subdivision may levy taxes in excess of the limitations in the amounts necessary to meet its obligation under this chapter. The expenditures authorized shall not be included in computing the cost of government as defined in any home rule charter of any city. The governing body of a municipality, for the purpose of meeting its liabilities under this chapter, in the event of a deficit, may issue its obligations payable in not more than two years, in an amount that may cause its indebtedness to exceed any statutory or charter limitations, without an election, and may levy taxes in the manner provided in section 475.61.

History: *Ex*1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5,11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6,17,18; 1951 c 442 s 2; 1953 c 97 s 5,6,8; 1953 c 288 s 1; 1955 c 380 s 2-4,6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 430 s 25 subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c 1 s 5-12; 1983 c 216 art 1 s 87; 1983 c 247 s 112; 1983 c 372 s 9-15; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1986 c 451 s 1; 1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18; 1989 c 65 s 3-5; 1989 c 209 art 2 s 1; 1992 c 484 s 4-7; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3-7; 1996 c 417 s 5-7,31; 1997 c 66 s 22-24,27,79,80

268.053 PAYMENT TO FUND BY NONPROFIT CORPORATIONS.

(a) Any nonprofit organization that is determined to be an employer shall pay taxes unless it elects to make payments in lieu of taxes to the reemployment insurance fund the amount of benefits charged to the employer's account.

(1) Any nonprofit organization may elect to become liable for payments in lieu of taxes for a period of not less than two calendar years beginning with the date that the organization was determined to be an employer by filing a written notice of election with the commissioner not later than 30 calendar days immediately following the date of the determination.

(2) Any nonprofit organization that makes an election will continue to be liable for payments in lieu of taxes until it files with the commissioner a written notice terminating its election not later than 30 calendar days prior to the beginning of the calendar year for which the termination shall first be effective.

(3) Any nonprofit organization that has been paying taxes may change to making payments in lieu of taxes by filing with the commissioner not later than 30 calendar days prior to January 1 of any calendar year a written notice of election to become liable for payments in lieu of taxes. The election shall not be terminable by the organization for that and the next calendar year.

(4) The commissioner may for good cause extend the period that a notice of election, or a notice of termination, must be filed and may permit an election to be retroactive.

(5) The commissioner shall notify each nonprofit organization of any determination of its status as an employer and of the effective date of any election or termination of election. The determinations shall be final unless a written appeal is filed within 30 calendar days after mailing of the determination. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) Payments in lieu of taxes, in the amount of benefits charged to the employer's account, during a calendar quarter, shall be made on or before the last day of the month next following the month in which the notice of benefits charged is mailed to the employer.

(c) Past due payments in lieu of taxes shall be subject to the same interest charges and collection procedures that apply to past due taxes.

(d) If any nonprofit organization is delinquent in making payments in lieu of taxes, the commissioner may terminate the organization's election to make payments in lieu of taxes as of the beginning of the next calendar year, and the termination shall be effective for that and the following calendar year.

(e) For purposes of this subdivision, a nonprofit organization is an organization, or group of organizations, described in section 501(c)(3) of the Internal Revenue Code that is exempt from income tax under section 501(a) of the code.

History: *Ex*1936 c 2 s 4; 1937 c 306 s 2; 1939 c 443 s 3; 1941 c 554 s 3; 1943 c 650 s 2; 1945 c 376 s 3; 1947 c 32 s 1-8; 1947 c 432 s 3-5,11; 1947 c 600 s 7; 1949 c 526 s 1; 1949 c 605 s 3-6,17,18; 1951 c 442 s 2; 1953 c 97 s 5,6,8; 1953 c 288 s 1; 1955 c 380 s 2-4,6; 1957 c 25 s 1; 1957 c 873 s 2; 1959 c 702 s 2-4; 1965 c 45 s 40; 1965 c 741 s 6-11; 1967 c 573 s 3; 1967 c 617 s 1; 1967 c 856 s 1; 1969 c 3 s 1; 1969 c 567 s 3; 1969 c 854 s 6; 1971 c 860 s 1; 1971 c 942 s 3-6; 1973 c 254 s 3; 1973 c 599 s 2-4; 1975 c 336 s 6-10; 1977 c 4 s 4,5; 1977 c 297 s 6-11; 1977 c 430 s 25 subd 1; 1977 c 455 s 82; 1978 c 674 s 60; 1979 c 181 s 4-8; 1980 c 508 s 2-7; 1Sp1982 c.1 s 5-12; 1983 c 216 art 1 s 87; 1983 c 247 s 112; 1983 c 372 s 9-15; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1986 c 451 s 1; 1987 c 242 s 1; 1987 c 362 s 9-12; 1987 c 385 s 10-18; 1989 c 65 s 3-5; 1989 c 209 art 2 s 1; 1992 c 484 s 4-7; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 3-7; 1996 c 417 s 5-7,31; 1997 c 66 s 25,79,80

268.054 [Repealed, 1998 c 265 s 46]

268.057 COLLECTION OF TAXES.

Subdivision 1. **Reports; delinquencies; penalties.** (a) Any employer who knowingly fails to submit to the commissioner any tax report at the time the report is required under section 268.051, subdivision 1a, or 268.0511 shall pay to the department a penalty of up to \$25

or an amount of 1-1/2 percent of taxes accrued for each month from and after the due date until the tax report is properly submitted, whichever is greater.

(b) If any employer required to submit tax reports fails to do so, or submits, willfully or otherwise, an incorrect or false tax report, the employer shall, on the demand of the commissioner sent by mail or electronic transmission, submit the tax report, or corrected report, within ten days and at the same time pay the tax due. If the employer fails within that time to submit the tax report or corrected report and pay any tax due, the commissioner shall make an estimated tax report from the commissioner's own knowledge and from information the commissioner may obtain and assess a tax on that basis. That assessed tax, plus any penalties and interest, shall be paid within ten days after notice of the amount due has been sent by mail or electronic transmission. Any assessed tax because of the failure of the employer to submit a tax report or corrected tax report shall be prima facie correct and valid, and the employer shall have the burden of establishing its incorrectness or invalidity in any subsequent action or proceeding. Whenever the delinquent employer files a tax report or corrected tax report, the commissioner may, on finding it substantially correct, accept that report.

(c) If the commissioner finds that any part of any employer's tax deficiency is due to fraud with intent to avoid payment of taxes to the fund, 50 percent of the total amount of the deficiency or \$500, whichever is greater, shall be assessed as a penalty against the employer and collected in addition to the deficiency.

(d) The penalties provided for in paragraphs (a) and (c) are in addition to interest and any other penalties and shall be paid to the department and credited to the contingent account.

(e) An employer or officer or agent of an employer is guilty of a gross misdemeanor, unless the tax or other payment involved exceeds \$500, in which case the person is guilty of a felony, if the individual:

(1) in order to avoid becoming or remaining a subject employer or to avoid or reduce any tax or other payment required under this chapter:

(i) makes a false statement or representation knowing it to be false; or

(ii) knowingly fails to disclose a material fact; or

(2) willfully fails or refuses to pay any taxes or other payment at the time required.

Subd. 2. Tax or payment in lieu of tax presumed valid. The tax and payment in lieu of tax, as assessed by the commissioner, including any penalties, shall be presumed to be valid and correctly determined and assessed, and the burden shall be upon the employer to show its incorrectness or invalidity. A statement by the commissioner of the amount of the tax, payment in lieu of tax, interest and penalties as determined or assessed by the commissioner, shall be admissible in evidence in any court or administrative proceeding and shall be prima facie evidence of the facts in the statement.

Subd. 3. Confession of judgment. (a) Any tax report or other form that is required to be filed with the commissioner concerning taxes or payments in lieu of taxes due, shall contain a written declaration that it is made under the penalties for willfully making a false report and shall contain a confession of judgment for the amount of the tax or payments in lieu of taxes shown due thereon to the extent not timely paid together with any interest and penalty due under this chapter.

(b) The commissioner may, within six years after the report or other form is filed, notwithstanding section 541.09, enter judgment on any confession of judgment after 20 calendar days' notice served upon the employer by mail. The judgment shall be entered by the court administrator of any county upon the filing of a photocopy of the confession of judgment along with a statement of the commissioner that the tax or payment in lieu of tax has not been paid.

Subd. 4. Costs. Any employer which fails to make and submit reports or pay any taxes or payment in lieu of taxes when due is liable to the department for any recording fees, sheriff fees, costs incurred by referral to any public or private agency outside the department, or litigation costs incurred in the collection of the amounts due or obtaining the reports.

If any check or money order, in payment of any amount due under this chapter, is not honored when presented for payment, the employer will be assessed a fee of \$20 which is in addition to any other fees provided by this chapter. The fee shall be assessed regardless of the

amount of the check or money order or the reason for nonpayment with the exception of processing errors made by a financial institution.

Costs due under this subdivision shall be paid to the department and credited to the administration fund.

Subd. 5. Interest on past due taxes. If taxes or payments in lieu of taxes to the fund are not paid on the date due the unpaid balance shall bear interest at the rate of one and one-half percent per month or any part thereof. Taxes or payments in lieu of taxes received by mail postmarked on a day following the date due shall be considered to have been paid on the due date if there is substantial evidence that the payment was actually deposited in the United States mail properly addressed to the department with postage prepaid thereon on or before the due date. Interest collected shall be credited to the contingent account. Interest may be waived by rules adopted by the commissioner.

Subd. 6. Interest on judgments. Notwithstanding section 549.09, if judgment is entered upon any past due tax or payment in lieu of taxes, the unpaid judgment shall bear interest at the rate specified in subdivision 5 until the date of payment.

Subd. 7. Credit adjustments, refunds. (a) If an employer makes an application for a credit adjustment of any amount paid as taxes or interest thereon within four years of the year that the payment was made, and the commissioner determines that the payment or any portion was erroneous, the commissioner shall make an adjustment and issue a credit without interest. If a credit cannot be used, the commissioner shall refund, without interest, the amount erroneously paid. The commissioner, on the commissioner's own motion, may make a credit adjustment or refund under this subdivision.

(b) If a credit adjustment or refund is denied in whole or in part, a notice of denial shall be sent to the employer by mail or electronic transmission. Within 30 calendar days after sending of the notice of denial, the employer may appeal. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 8. Limitation. Nothing in sections 268.03 to 268.23, or any part thereof, shall be construed to authorize any refund of moneys due and payable under the law and rules in effect at the time such moneys were paid.

Subd. 9. Prior decisions. In the event a final decision on an appeal under section 268.105 determines the amount of taxes due under sections 268.03 to 268.23, then, if the amount, together with interest and penalties, is not paid within 30 days after the decision, the provisions of section 268.058 apply. The commissioner shall proceed thereunder, substituting a certified copy of the final decision in place of the tax report. A final decision on an appeal under section 268.105 is conclusive for all the purposes of sections 268.03 to 268.23 except as otherwise provided, and, together with the records therein made, shall be admissible in any subsequent judicial proceeding involving liability for taxes.

Subd. 10. Priorities under legal dissolutions or distributions. In the event of any distribution of an employer's assets pursuant to an order of any court under the laws of this state, including any receivership, assignment for benefit of creditors, adjudicated insolvency, composition, or similar proceeding, taxes then or thereafter due shall be paid in full prior to all other claims except claims for wages of not more than \$250 to each claimant, earned within six months of the commencement of the proceedings. In the event of an employer's adjudication in bankruptcy, judicially confirmed extension proposal, or composition, under the federal Bankruptcy Act of 1898, as amended, taxes then or thereafter due shall be entitled to such priority as is provided in that act for taxes due any state of the United States.

History: *Ex1936 c 2 s 14; 1941 c 554 s 13; 1943 c 650 s 9; 1945 c 376 s 13; 1949 c 605 s 12,13; 1951 c 55 s 1; 1953 c 97 s 17; 1969 c 9 s 65; 1969 c 567 s 3; 1969 c 854 s 13; 1973 c 254 s 3; 1973 c 720 s 73 subs 2,3; 1975 c 108 s 1; 1975 c 302 s 3,4; 1975 c 336 s 22,23; 1977 c 430 s 25 subd 1; 1978 c 618 s 2; 1978 c 674 s 60; 1980 c 508 s 11-13; 3Sp1981 c 2 art 1 s 33; 1Sp1982 c 1 s 34,35; 1983 c 372 s 39; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 362 s 26; 1987 c 385 s 28-30; 1989 c 65 s 12; 1989 c 209 art 2 s 1; 1993 c 67 s 11; 1994 c 483 s 1; 1995 c 54 s 13-15; 1996 c 417 s 24,31; 1997 c 66 s 66-69,79,80; 1998 c 265 s 14-17,44*

268.058 TAX AND PAYMENT IN LIEU OF TAXES LIEN.

Subdivision 1. **Lien.** (a) Any taxes, benefit overpayments, or payments in lieu of taxes due under this chapter and interest and penalties imposed with respect thereto, shall become a lien upon all the property, within this state, both real and personal, of the person liable therefor, from the date of assessment of the tax, benefit overpayment, or payment in lieu of taxes. The term "date of assessment" means the date a report was due or the payment due date of the notice of benefits charged to a payment in lieu of taxes account.

(b)(1) The lien imposed by this section is not enforceable against any purchaser, mortgagee, pledgee, holder of a Uniform Commercial Code security interest, mechanic's lien, or judgment lien creditor, until a notice of lien has been filed by the commissioner in the office of the county recorder of the county in which the property is situated, or in the case of personal property belonging to an individual who is not a resident of the state, or which is a corporation, partnership, or other organization, in the office of the secretary of state. When the filing of the notice of lien is made in the office of the county recorder, the fee for filing and indexing shall be as prescribed in sections 272.483 and 272.484.

(2) Notices of liens, lien renewals, and lien releases, in a form prescribed by the commissioner of economic security, may be filed with the county recorder or the secretary of state by mail, personal delivery, or by electronic transmission by the commissioner or a delegate into the computerized filing system of the secretary of state authorized under section 336.9-411. The secretary of state shall transmit the notice electronically to the office of the county recorder, if that is the place of filing, in the county or counties shown on the computer entry. The filing officer, whether the county recorder or the secretary of state, shall endorse and index a printout of the notice in the same manner as if the notice had been mailed or delivered.

(3) County recorders and the secretary of state shall enter information relative to lien notices, renewals, and releases filed in their offices into the central database of the secretary of state. For notices filed electronically with the county recorders, the date and time of receipt of the notice and county recorder's file number, and for notices filed electronically with the secretary of state, the secretary of state's recording information, must be entered by the filing officer into the central database before the close of the working day following the day of the original data entry by the department.

(c) The lien imposed on personal property by this section, even though properly filed, is not enforceable against a purchaser with respect to tangible personal property purchased at retail or as against the personal property listed as exempt in sections 550.37, 550.38 and 550.39.

(d) A notice of tax lien filed pursuant to this section has priority over any security interest arising under chapter 336, article 9, which is perfected prior in time to the lien imposed by this section, but only if:

(1) the perfected security interest secures property not in existence at the time the notice of tax lien is filed; and

(2) the property comes into existence after the 45th day following the day on which the notice of tax lien is filed, or after the secured party has actual notice or knowledge of the tax lien filing, whichever is earlier.

(e) The lien imposed by this section shall be enforceable from the time the lien arises and for ten years from the date of filing the notice of lien. A notice of lien may be renewed by the commissioner before the expiration of the ten-year period for an additional ten years. The delinquent employer must receive notice of the renewal.

(f) The lien imposed by this section shall be enforceable by levy as authorized in subdivision 8 or by judgment lien foreclosure as authorized in chapter 550.

Subd. 2. Limitation for homestead property. The lien imposed by this section is a lien upon property defined as homestead property in chapter 510. The lien may be enforced only upon the sale, transfer, or conveyance of the homestead property.

Subd. 3. Levy. (a) If any tax or payment in lieu of taxes payable to the department is not paid when due, the amount may be collected by the commissioner, a duly authorized representative, or by the sheriff of any county to whom the commissioner has issued a warrant, who may levy upon all property and rights of property of the person liable for the tax or pay-

ment in lieu of taxes, (except that which is exempt from execution pursuant to section 550.37), or property on which there is a lien provided by subdivision 1. The terms "tax or payment in lieu of taxes" shall include any penalty, interest, and costs. The term "levy" includes the power of distraint and seizure by any means. Before a levy is made or warrant issued, notice and demand for payment of the amount due shall be given to the person liable for the tax or payment in lieu of taxes at least ten days prior to the levy or issuing of a warrant.

(b) Upon the commissioner issuing a warrant, the sheriff shall proceed within 60 days to levy upon the rights to property of the employer within the employer's county, except the homestead and household goods of the employer and property of the employer not liable to attachment, garnishment, or sale on any final process issued from any court under the provisions of section 550.37, and shall sell so much thereof as is required to satisfy the tax, payment in lieu of taxes, interest, and penalties, together with the commissioner's costs. The sales shall, as to their manner, be governed by the law applicable to sales of like property on execution issued against property upon a judgment of a court of record. The proceeds of the sales, less the sheriff's costs, shall be turned over to the commissioner, who shall retain a part thereof as is required to satisfy the tax, payment in lieu of taxes, interest, penalties, and costs, and pay over any balance to the employer.

(c) If the commissioner has reason to believe that collection of the tax or payment in lieu of taxes is in jeopardy, notice and demand for immediate payment of the amount may be made by the commissioner. If the tax or payment in lieu of taxes is not paid, the commissioner may proceed to collect by levy or issue a warrant without regard to the ten-day period provided herein.

(d) In making the execution of the levy and in collecting the tax or payment in lieu of taxes due, the commissioner shall have all of the powers provided in chapter 550 and in any other law for purposes of effecting an execution against property in this state. The sale of property levied upon and the time and manner of redemption therefrom shall be as provided in chapter 550. The seal of the court, subscribed by the court administrator, as provided in section 550.04, shall not be required. The levy for collection of taxes or payments in lieu of taxes may be made whether or not the commissioner has commenced a legal action for collection of the amount.

(e) Where a jeopardy assessment or any other assessment has been made by the commissioner, the property seized for collection of the tax or payment in lieu of taxes shall not be sold until any determination of liability, rate, or benefit charges has become final. No sale shall be made unless the tax or payment in lieu of taxes remain unpaid for a period of more than 30 days after the determination becomes final. Seized property may be sold at any time if:

- (1) the employer consents in writing to the sale; or
- (2) the commissioner determines that the property is perishable or may become greatly reduced in price or value by keeping, or that the property cannot be kept without great expense.

(f) Where a levy has been made to collect taxes or payments in lieu of taxes pursuant to this subdivision and the property seized is properly included in a formal proceeding commenced under sections 524.3-401 to 524.3-505 and maintained under full supervision of the court, the property shall not be sold until the probate proceedings are completed or until the court so orders.

(g) The property seized shall be returned by the commissioner if the owner gives a surety bond equal to the appraised value of the owner's interest in the property, as determined by the commissioner, or deposits with the commissioner security in a form and amount as the commissioner deems necessary to insure payment of the liability, but not more than twice the liability.

(h) Notwithstanding any other law to the contrary, if a levy or sale pursuant to this section would irreparably injure rights in property which the court determines to be superior to rights of the state in the property, the district court may grant an injunction to prohibit the enforcement of the levy or to prohibit the sale.

(i) Any person who fails or refuses to surrender without reasonable cause any property or rights to property subject to levy upon demand by the commissioner shall be personally

liable to the department in an amount equal to the value of the property or rights not so surrendered, but not exceeding the amount of tax or payment in lieu of taxes for the collection of which the levy has been made. Any amount recovered under this subdivision shall be credited against the tax or payment in lieu of taxes liability for the collection of which the levy was made. The term "person" includes an officer or employee of a corporation or a member or employee of a partnership who, as an officer, employee, or member is under a duty to surrender the property or rights to property or to discharge the obligation.

(j) Any action taken by the commissioner pursuant to this subdivision shall not constitute an election by the department to pursue a remedy to the exclusion of any other remedy.

(k) After the commissioner has seized the property of any person, that person may, upon giving 48 hours notice to the commissioner and to the court, bring a claim for equitable relief before the district court for the release of the property to the employer upon terms and conditions as the court may deem equitable.

(l) Any person in possession of (or obligated with respect to) property or rights to property subject to levy upon which a levy has been made who, upon demand by the commissioner, surrenders the property or rights to property or who pays a liability under this subdivision shall be discharged from any obligation or liability to the person liable for the payment of the delinquent tax or payment in lieu of taxes with respect to the property or rights to property so surrendered or paid.

(m) Notwithstanding any other provisions of law to the contrary, the notice of any levy authorized by this section may be served by mail or by delivery by an employee or agent of the department.

(n) It shall be lawful for the commissioner to release the levy upon all or part of the property or rights to property levied upon if the commissioner determines that the release will facilitate the collection of the liability, but the release shall not operate to prevent any subsequent levy. If the commissioner determines that property has been wrongfully levied upon, it shall be lawful for the commissioner to return:

(1) the specific property levied upon, at any time; or

(2) an amount of money equal to the amount of money levied upon, at any time before the expiration of nine months from the date of levy.

(o) Notwithstanding section 52.12, a levy by the commissioner made pursuant to the provisions of this section upon an employer's funds on deposit in a financial institution located in this state, shall have priority over any unexercised right of setoff of the financial institution to apply the levied funds toward the balance of an outstanding loan or loans owed by the employer to the financial institution. A claim by the financial institution that it exercised its right to setoff prior to the levy by the commissioner must be substantiated by evidence of the date of the setoff, and shall be verified by the sworn statement of a responsible corporate officer of the financial institution. Furthermore, for purposes of determining the priority of any levy made under this section, the levy shall be treated as if it were an execution made pursuant to chapter 550.

Subd. 4. Right of setoff. Upon certification by the commissioner to the commissioner of finance or to any state agency which disburses its own funds, that an employer has an uncontested delinquent tax or payment in lieu of taxes liability owed to the department, and that the state has purchased personal services, supplies, contract services, or property from said employer, the commissioner of finance or the state agency shall apply to the delinquent tax or payment in lieu of taxes liability funds sufficient to satisfy the unpaid liability from funds appropriated for payment of said obligation of the state or any of its agencies that are due and owing the employer. The credit shall not be made against any funds exempt under section 550.37 or those funds owed an individual employer who receives assistance under chapter 256.

All funds, whether general or dedicated, shall be subject to setoff in the manner provided in this subdivision. Transfer of funds in payment of the obligations of the state or any of its agencies to an employer and any actions for the funds shall be had against the commissioner on the issue of the tax or payment in lieu of taxes liability. Nothing in this section shall be construed to limit the previously existing right of the state or any of its agencies to setoff.

Notwithstanding any law to the contrary, the commissioner shall have first priority to setoff funds owed by the department to a delinquent employer.

Subd. 5. Collection by civil action. (a) In addition to all other collection methods authorized, if any employer is delinquent on any payment of taxes or interest due thereon or penalties for failure to file a tax report and other reports as required by this chapter or by any rule of the commissioner, the amount due may be collected by civil action in the name of the state of Minnesota, and any money recovered shall be credited to the funds provided for under those sections. Any employer adjudged delinquent shall pay the costs of the action. Civil actions brought under this subdivision shall be heard as provided under section 16D.14. No action for the collection of taxes, interest thereon, or penalties shall be commenced more than six years after the taxes have been reported by the employer or determined by the commissioner to be due and payable. In any action, judgment shall be entered against any employer in default for the relief demanded in the complaint without proof, together with costs and disbursements, upon the filing of an affidavit of default.

(b) Any employer that is not a resident of this state and any resident employer removed from this state, shall be considered to appoint the secretary of state as its agent and attorney for the acceptance of process in any civil action under this subdivision. In instituting an action against any employer, the commissioner shall file process with the secretary of state, together with a payment of a fee of \$15 and that service shall be considered sufficient service upon the employer, and shall have the same force and validity as if served upon the employer personally within this state. The commissioner shall send notice of the service of process, together with a copy of the process, by certified mail, to the employer at its last known address. The commissioner's affidavit of compliance with the provisions of this section, and a copy of the notice of service shall be appended to the original of the process and filed in the court.

(c) No court filing fees, docketing fees, or release of judgment fees may be assessed against the state for actions pursuant to this subdivision.

Subd. 6. Injunction forbidden. No suit shall lie to enjoin the assessment or collection of any tax or payment in lieu of taxes imposed by this chapter, or the interest and penalties imposed thereby.

History: 1Sp1982 c 1 s 36; 1983 c 372 s 40-44; 1985 c 281 s 1; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 385 s 31-34; 1989 c 209 art 2 s 1; 1991 c 291 art 18 s 1; 1992 c 484 s 14; 1993 c 67 s 12; 1993 c 137 s 8; 1994 c 483 s 1; 1994 c 488 s 7; 1995 c 54 s 16,17; 1996 c 417 s 25,31; 1997 c 66 s 67,79,80; 1998 c 265 s 44

268.059 GARNISHMENT FOR DELINQUENT TAXES AND BENEFIT OVERPAYMENTS.

(a) The commissioner may give notice to any employer that an employee owes delinquent taxes, payments in lieu of taxes, or overpaid benefits, including penalties, interest, and costs, and that the obligation to the department should be withheld from the employee's wages. The commissioner may proceed only if the tax, payment in lieu of taxes, or benefit overpayment is uncontested or if the time for any appeal has expired. The commissioner shall not proceed until 30 calendar days after mailing to the debtor employee, at the debtor's last known address, a written notice of intent to garnish wages and exemption notice. That notice shall list:

- (1) the amount of taxes, payments in lieu of taxes, overpaid benefits, interest, penalties, or costs due from the debtor;
- (2) demand for immediate payment; and
- (3) the intention to serve a garnishment notice on the debtor's employer.

The notice shall expire 180 calendar days after it has been mailed to the debtor provided that the notice may be renewed by mailing a new notice that is in accordance with this section. The renewed notice shall have the effect of reinstating the priority of the original notice. The exemption notice shall be in substantially the same form as in section 571.72. The notice shall inform the debtor of the right to claim exemptions contained in section 550.37, subdivision 14. If no written claim of exemption is received by the commissioner within 30 calendar days after mailing of the notice, the commissioner may proceed with the garnishment. The

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notice to the debtor's employer may be served by mail and shall be in substantially the same form as in section 571.75. Upon receipt of the garnishment notice, the employer shall withhold from the earnings due or to become due to the employee, the amount shown on the notice plus accrued interest, subject to section 571.922. The employer shall continue to withhold each pay period the amount shown on the notice plus accrued interest until the garnishment notice is released by the commissioner. Upon receipt of notice by the employer, the claim of the commissioner shall have priority over any subsequent garnishments or wage assignments. The commissioner may arrange between the employer and employee for withholding a portion of the total amount due the employee each pay period, until the total amount shown on the notice plus accrued interest has been withheld.

The "earnings due" any employee is as defined in section 571.921. The maximum garnishment allowed for any one pay period shall be decreased by any amounts payable pursuant to any other garnishment action served prior to the garnishment notice, and any amounts covered by any irrevocable and previously effective assignment of wages; the employer shall give notice to the commissioner of the amounts and the facts relating to the assignment within ten days after the service of the garnishment notice on the form provided by the commissioner.

(b) If the employee ceases to be employed by the employer before the full amount set forth on the garnishment notice plus accrued interest has been withheld, the employer shall immediately notify the commissioner in writing of the termination date of the employee and the total amount withheld. No employer may discharge or discipline any employee because the commissioner has proceeded under this section. If an employer discharges an employee in violation of this section, the employee shall have the same remedy as provided in section 571.927, subdivision 2.

(c) Within ten calendar days after the expiration of the pay period, the employer shall remit to the commissioner, on a form and in the manner prescribed by the commissioner, the amount withheld during each pay period.

(d) Paragraphs (a) to (c) shall apply if the employer is the state of Minnesota or any political subdivision.

(e) The commissioner shall refund to the employee any excess amounts withheld from the employee.

(f) An employer that fails or refuses to comply with this section shall be liable as provided in section 268.058, subdivision 3, paragraph (i).

History: 1996 c 417 s 28; 1997 c 66 s 70,79; 1998 c 265 s 18

268.06 Subdivision 1. [Renumbered 268.051; subd 1]

Subd. 2. [Repealed, 1997 c 66 s 81]

Subd. 3. [Repealed, 1969 c 854 s 14]

Subd. 3. [Repealed, 1969 c 854 s 14]

Subd. 3a. [Renumbered 268.051, subd 5]

Subd. 4. [Repealed, 1997 c 66 s 81]

Subd. 5. [Repealed, 1997 c 66 s 81]

Subd. 6. [Renumbered 268.051, subd 3]

Subd. 7. [Repealed, 1949 c 605 s 15]

Subd. 7. [Repealed, 1949 c 605 s 15]

Subd. 8. [Renumbered 268.051, subd 2]

Subd. 8a. [Renumbered 268.051, subd 8]

Subd. 9. [Repealed, 1949 c 605 s 15]

Subd. 9. [Repealed, 1949 c 605 s 15]

Subd. 10. [Repealed, 1949 c 605 s 15]

Subd. 10. [Repealed, 1949 c 605 s 15]

Subd. 11. [Repealed, 1953 c 97 s 7]

Subd. 11. [Repealed, 1953 c 97 s 7]

Subd. 12. [Repealed, 1953 c 97 s 7]

- Subd. 12. [Repealed, 1953 c 97 s 7]
- Subd. 13. [Repealed, 1953 c 97 s 7]
- Subd. 13. [Repealed, 1953 c 97 s 7]
- Subd. 14. [Repealed, 1953 c 97 s 7]
- Subd. 14. [Repealed, 1953 c 97 s 7]
- Subd. 15. [Repealed, 1953 c 97 s 7]
- Subd. 15. [Repealed, 1953 c 97 s 7]
- Subd. 16. [Repealed, 1953 c 97 s 7]
- Subd. 16. [Repealed, 1953 c 97 s 7]
- Subd. 17. [Repealed, 1949 c 605 s 15]
- Subd. 17. [Repealed, 1949 c 605 s 15]
- Subd. 18. [Renumbered 268.047, subd 5]
- Subd. 19. [Renumbered 268.051, subd 6]
- Subd. 20. [Renumbered 268.051, subd 6, paragraphs (c) and (d)]
- Subd. 21. [Renumbered 268.045]
- Subd. 22. [Renumbered 268.051, subd 4]
- Subd. 23. [Repealed, 1955 c 380 s 5]
- Subd. 23. [Repealed, 1955 c 380 s 5]
- Subd. 24. [Renumbered 268.051, subd 7]
- Subd. 25. [Renumbered 268.052, subd 1]
- Subd. 26. [Renumbered 268.052, subd 3]
- Subd. 27. [Renumbered 268.052, subd 4]
- Subd. 28. [Renumbered 268.053]
- Subd. 29. [Renumbered 268.045, paragraph (d)]
- Subd. 30. [Repealed, 1997 c 66 s 81]
- Subd. 31. [Renumbered 268.052, subd 2]
- Subd. 32. [Repealed, 1983 c 372 s 48]
- Subd. 32. [Repealed, 1983 c 372 s 48]
- Subd. 33. [Repealed, 1997 c 66 s 81]
- Subd. 34. [Renumbered 268.054]

268.061 [Repealed, 1988 c 689 art 2 s 269]

268.062 [Renumbered 268.068]

268.0625 REEMPLOYMENT INSURANCE TAX CLEARANCES; ISSUANCES OF LICENSES.

Subdivision 1. **Reemployment insurance clearance required.** The state or a political subdivision of the state may not issue, transfer, or renew, and must revoke a license for the conduct of any profession, trade, or business, if the commissioner notifies the licensing authority that the applicant owes the state delinquent taxes, payments in lieu of taxes, or benefit overpayments. The commissioner may not notify the licensing authority unless the applicant owes \$500 or more to the reemployment insurance fund. A licensing authority that has received a notice from the commissioner may issue, transfer, renew, or not revoke the applicant's license only if (a) the commissioner issues a reemployment insurance tax clearance certificate; and (b) the commissioner or the applicant forwards a copy of the clearance to the licensing authority.

Subd. 2. **Issuance of clearance.** The commissioner may issue a reemployment insurance tax clearance certificate only if (a) the applicant does not owe the state any delinquent taxes, payments in lieu of taxes, or benefit overpayments; or (b) the applicant has entered into a payment agreement to liquidate the delinquent taxes, payments in lieu of taxes, or benefit overpayments and is current with all the terms of that payment agreement.

For the purposes of this section, "applicant" means: (a) an individual if the license is issued to or in the name of an individual, or the corporation, limited liability company, or

partnership if the license is issued to or in the name of a corporation, limited liability company, or partnership; or (b) an officer of a corporation, manager of a limited liability company, or a member of a partnership, or an individual who is liable for the delinquent taxes, payments in lieu of taxes, or benefit overpayments, either for the entity for which the license is at issue or for another entity for which the liability was incurred, or personally as a licensee. In the case of a license transfer, "applicant" means both the transferor and the transferee of the license. "Applicant" also means any holder of a license.

Subd. 3. **Notice and right to hearing.** At least 30 days before the commissioner notifies a licensing authority pursuant to subdivision 1, a notice and demand for payment of the amount due shall be given to the applicant. If the applicant disputes the amount due, the applicant must request a hearing in writing within 30 days after the mailing of the notice and demand for payment to the applicant's last known address. Proceedings on the appeal of the amount due shall be conducted in accordance with section 268.105.

Subd. 4. **Licensing authority; duties.** Upon request of the commissioner, the licensing authority must provide the commissioner with a list of all applicants, including the name, address, business name and address, social security number, and business identification number of each applicant. The commissioner may request from a licensing authority a list of the applicants no more than once each calendar year. Notwithstanding section 268.19, the commissioner may release information necessary to accomplish the purpose of this section.

Subd. 5. **Other remedies.** Any action taken by the commissioner pursuant to this section is not an election by the commissioner to pursue a remedy to the exclusion of any other remedy.

History: 1987 c 385 s 37; 1994 c 488 s 8; 1995 c 54 s 20; 1996 c 417 s 26,27; 1997 c 66 s 79,80

268.063 PERSONAL LIABILITY.

(a) Any officer, director, or employee of a corporation or any manager, governor, member, or employee of a limited liability company who

(1) either individually or jointly with others, have or should have had control of, supervision over, or responsibility for the filing of the tax reports or paying the amounts due under this chapter, and

(2) willfully fails to file the tax reports or pay the amounts due, shall be personally liable for taxes or payments in lieu of taxes, including interest, penalties, and costs in the event the employer does not pay.

For purposes of this section, "willfulness" means that the facts demonstrate that the responsible party used or allowed the use of corporate or company assets to pay other creditors knowing that the amounts due under this chapter were unpaid. An evil motive or intent to defraud is not necessary.

(b) Any partner of a limited liability partnership, or professional limited liability partnership, shall be jointly and severally liable for taxes or payments in lieu of taxes, including interest, penalties, and costs in the event the employer does not pay.

(c) Any personal representative of the estate of a decedent or fiduciary who voluntarily distributes the assets without reserving a sufficient amount to pay the taxes, payments in lieu of taxes, interest, and penalties due shall be personally liable for the deficiency.

(d) The personal liability of any individual shall survive dissolution, reorganization, receivership, or assignment for the benefit of creditors. For the purposes of this section, all wages paid by the employer shall be considered earned from the individual determined to be personally liable.

(e) The commissioner shall make an initial determination as to personal liability. The determination shall be final unless the individual found to be personally liable within 30 calendar days after mailing of notice of determination to the individual's last known address files a protest. Upon receipt of the protest, the commissioner shall reexamine the personal liability determination and either affirm or redetermine the assessment of personal liability and a notice of the affirmation or redetermination shall be mailed to the individual's last known address. The affirmation or redetermination shall become final unless an appeal is

filed within 30 calendar days after the date of mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

History: 1Sp1982 c 1 s 36; 1983 c 372 s 40-44; 1985 c 281 s 1; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1Sp1986 c 3 art 1 s 82; 1987 c 385 s 31-34; 1989 c 209 art 2 s 1; 1991 c 291 art 18 s 1; 1992 c 484 s 14; 1993 c 67 s 12; 1993 c 137 s 8; 1994 c 483 s 1; 1994 c 488 s 7; 1995 c 54 s 16,17; 1996 c 417 s 25,31; 1997 c 66 s 79; 1998 c 265 s 19

268.064 LIABILITY OF SUCCESSOR.

Subdivision 1. Acquisition of organization, trade, or business. Any individual or organization, whether or not an employer, which acquires all or part of the organization, trade, or business or all or part of the assets thereof from an employer, is jointly and severally liable, in an amount not to exceed the reasonable value of that part of the organization, trade, or business or assets acquired, for the taxes due and unpaid by the employer, and the amount of liability shall, in addition, be a lien against the property or assets so acquired which shall be prior to all other unrecorded liens. This subdivision does not apply to sales in the normal course of the employer's business.

Subd. 2. Reasonable value. The commissioner, upon the commissioner's own motion or upon application of the potential successor, shall determine the reasonable value of the organization, trade, or business or assets acquired by the successor based on available information. The determination shall be final unless the successor, within 30 calendar days after the sending of the determination to the successor by mail or electronic transmission, files an appeal. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 3. Statement of amount due. Prior to the date of acquisition, the commissioner shall furnish the potential successor with a written statement of the predecessor's taxes due and unpaid, on record as of the date of issuance, only upon the written request of the potential successor and the written release of the predecessor. No release is required after the date of acquisition.

Subd. 4. Additional remedy. The remedy provided by this section is in addition to all other existing remedies against the employer or a successor and is not an election by the department to pursue this remedy to the exclusion of any other remedy.

History: 1987 c 385 s 35; 1989 c 65 s 13; 1995 c 54 s 18; 1997 c 66 s 79,80; 1998 c 265 s 20,44

268.065 LIABILITY OF THIRD PARTIES TO ASSURE PAYMENT OF AMOUNTS DUE FROM CONTRACTORS, SUBCONTRACTORS, AND EMPLOYEE LEASING FIRMS.

Subdivision 1. Contractors. A contractor, who is or becomes an employer under this chapter, who contracts with any subcontractor, who is or becomes an employer under this chapter, shall guarantee the payment of all the taxes, interest, penalties, and collection costs which are due or become due from the subcontractor with respect to wages paid for employment on the contract by:

- (a) withholding sufficient money on the contract; or
- (b) requiring the subcontractor to provide a good and sufficient bond guaranteeing the payment of all taxes, interest, penalties, and collection costs which may become due.

The contractor may make a written request for verification that the subcontractor has paid the taxes due 60 days after the due date for filing the tax report that includes the final wages paid for services performed under the contract. If department records show that the subcontractor has paid the taxes for the period covered by the contract, the department may release the contractor from its liability under this subdivision.

The words "contractor" and "subcontractor" include individuals, partnerships, firms, or corporations, or other association of persons engaged in the construction industry.

Subd. 2. Employee leasing firms. A person whose work force consists of 50 percent or more of workers provided by employee leasing firms, is directly liable for the payment of all the taxes, penalties, interest, and collection costs which are due or become due from wages paid for employment on the contract, unless the contract requires the employee leasing firm

to provide a good and sufficient bond guaranteeing the payment of all taxes, penalties, interest, and collection costs which may become due. "Employee leasing firm" means an employer that provides its employees to other firms, persons, and employers without severing its employer-employee relationship with the worker for the services performed for the lessee.

Subd. 3. Determination of liability. An official designated by the commissioner shall make an initial determination as to the liability under this section. The determination shall be final unless the contractor or person found to be liable files a written appeal within 30 days after mailing of notice of determination to the person's last known address. Proceedings on the appeal shall be conducted in accordance with section 268.105.

History: 1987 c 385 s 36; 1989 c 65 s 14; 1995 c 54 s 19; 1997 C 66 S 79,80; 1998 c 265 s 44

268.066 CANCELLATION OF DELINQUENT TAXES.

(a) The commissioner shall cancel as uncollectible any taxes, payments in lieu of taxes, penalties, or the interest or costs thereon, which remain unpaid six years after the amounts have been first determined due and payable, except where the delinquent amounts are secured by a notice of lien, a judgment, are in the process of garnishment, or are under a payment plan.

(b) The commissioner may cancel at any time as uncollectible any taxes, payments in lieu of taxes, penalties, or the interest or costs thereon, that the commissioner determines are uncollectible due to death or bankruptcy.

History: 1987 c 385 s 39; 1996 c 305 art 1 s 58; 1997 c 66 s 79; 1998 c 265 s 21

268.067 COMPROMISE AGREEMENTS.

(a) The commissioner may compromise in whole or in part any action, determination, or decision that affects an employer and that has become final during the prior 24 months.

(b) The commissioner may at any time compromise delinquent employer taxes, payments in lieu of taxes, interest, penalties, and costs.

(c) Any compromise under paragraphs (a) and (b) shall be by written agreement signed by the employer and the commissioner.

The commissioner shall enter into a compromise agreement only if it is in the best interest of the state of Minnesota. The agreement must set forth the reason and all the terms. The agreement must be approved by an attorney who is a regularly salaried employee of the department and who has been designated by the commissioner for that purpose.

History: Ex1936 c 2 s 14; 1941 c 554 s 13; 1943 c 650 s 9; 1945 c 376 s 13; 1949 c 605 s 12,13; 1951 c 55 s 1; 1953 c 97 s 17; 1969 c 9 s 65; 1969 c 567 s 3; 1969 c 854 s 13; 1973 c 254 s 3; 1973 c 720 s 73 subds 2,3; 1975 c 108 s 1; 1975 c 302 s 3,4; 1975 c 336 s 22,23; 1977 c 430 s 25 subd 1; 1978 c 618 s 2; 1978 c 674 s 60; 1980 c 508 s 11-13; 3Sp1981 c 2 art 1 s 33; 1Sp1982 c 1 s 34,35; 1983 c 372 s 39; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 362 s 26; 1987 c 385 s 28-30; 1989 c 65 s 12; 1989 c 209 art 2 s 1; 1993 c 67 s 11; 1994 c 483 s 1; 1995 c 54 s 13-15; 1996 c 417 s 24,31; 1997 c 66 s 79; 1998 c 265 s 22

268.068 NOTICE TO WORKERS.

Each employer shall post and maintain printed statements of an individual's right to apply for reemployment insurance benefits in places readily accessible to individuals in the employer's service. Such printed statements must be supplied by the commissioner at no cost to an employer.

History: 1996 c 417 s 8; 1997 c 66 s 79

268.069 PAYMENT OF BENEFITS.

(a) The commissioner shall pay reemployment insurance benefits from the Minnesota reemployment insurance fund to a claimant who has met each of the following requirements:

(1) the claimant has established a reemployment insurance account in accordance with section 268.07;

(2) the claimant is not subject to a disqualification from benefits under section 268.095;

(3) the claimant has met all of the eligibility requirements under section 268.08; and

(4) the claimant does not have an outstanding overpayment of benefits under section 268.18.

(b) Benefits shall not be considered as paid by an employer. The commissioner shall determine a claimant's entitlement to benefits based upon that information available and any agreement between a claimant and an employer shall not be binding on the commissioner in determining a claimant's entitlement. Any obligation on an employer as a result of benefits charged to the employer is to the fund only.

History: 1997 c 66 s 28; 1998 c 265 s 45

268.07 REEMPLOYMENT INSURANCE ACCOUNT.

Subdivision 1. **Application; determination.** (a) An application for reemployment insurance benefits may be made in person, by mail, by telephone, or by electronic transmission as the commissioner shall require. The commissioner may by rule adopt other requirements for an application.

(b) The commissioner shall promptly examine each application for benefits to determine the base period, the benefit year, the weekly benefit amount payable, if any, and the maximum amount of benefits payable, if any. The determination shall be known as the determination of reemployment insurance account. A determination of reemployment insurance account must be promptly sent to the claimant and all base period employers, by mail or electronic transmission.

(c) If a base period employer failed to provide wage information for the claimant as required in section 268.044, the commissioner shall accept a claimant certification as to wage credits, based upon the claimant's records, and issue a determination of reemployment insurance account.

(d)(1) The commissioner may, at any time within 24 months from the establishment of a reemployment insurance account, reconsider any determination of reemployment insurance account and make a redetermination if the commissioner finds that the determination was incorrect for any reason. A redetermination of reemployment insurance account shall be promptly sent to the claimant and all base period employers, by mail or electronic transmission.

(2) If a redetermination of reemployment insurance account reduces the weekly benefit amount or maximum amount of benefits payable, any benefits paid greater than the claimant was entitled is an overpayment subject to section 268.18.

Subd. 2. **Weekly benefit amount and maximum amount of benefits.** (a) To establish a reemployment insurance account, a claimant must have:

(1) wage credits in two or more calendar quarters of the claimant's base period;

(2) minimum total wage credits equal to or greater than the high quarter wage credits multiplied by 1.25;

(3) high quarter wage credits of not less than \$1,000.

(b) If the commissioner finds that a claimant has established a reemployment insurance account, the weekly benefit amount payable during the claimant's benefit year shall be the higher of:

(1) 50 percent of the claimant's average weekly wage during the claimant's base period, to a maximum of 66-2/3 percent of the state's average weekly wage; or

(2) 50 percent of the claimant's average weekly wage during the high quarter, to a maximum of the higher of \$331 or 50 percent of the state's average weekly wage.

The claimant's average weekly wage under clause (1) shall be computed by dividing the claimant's total wage credits by 52. The claimant's average weekly wage under clause (2) shall be computed by dividing the claimant's high quarter wage credits by 13.

(c) The state's maximum weekly benefit amount and the claimant's weekly benefit amount shall be computed to the nearest whole dollar.

(d) The maximum amount of benefits payable on any reemployment insurance account shall equal one-third of the claimant's total wage credits rounded to the next lower dollar, not to exceed 26 times the claimant's weekly benefit amount.

Subd. 2a. [Repealed by amendment, 1996 c 417 s 9]

Subd. 3. **Second account requirements.** To establish a second reemployment insurance account following the expiration of a benefit year on a prior reemployment insurance account, a claimant must have sufficient wage credits to establish a reemployment insurance account under subdivision 2 and must have performed services in covered employment after the effective date of the prior reemployment insurance account. The wages paid for that employment must equal not less than eight times the weekly benefit amount of the prior reemployment insurance account. A reemployment insurance account established sufficiently in advance of anticipated unemployment to make the limitations of this subdivision ineffective shall not be allowed. The purpose of this subdivision is to prevent a claimant from establishing more than one reemployment insurance account as a result of one separation from employment.

Subd. 3a. **Right of appeal.** (a) A determination or redetermination of a reemployment insurance account shall be final unless a claimant or base period employer within 30 calendar days after the sending of the determination or redetermination files an appeal. Every determination or redetermination of a reemployment insurance account shall contain a prominent statement indicating in clear language the method of appealing, the time within which the appeal must be made, and the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(b) Any claimant or base period employer may appeal from a determination or redetermination of a reemployment insurance account on the issue of whether services performed constitute employment and covered employment. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 3b. **Limitations.** (a) A reemployment insurance account shall be established the Sunday of the calendar week that the application for reemployment insurance benefits was made. If an individual attempted to make an application for a reemployment insurance account, but was prevented from making an application by the department, the reemployment insurance account shall be established the Sunday of the calendar week the individual first attempted to make an application.

(b) A reemployment insurance account, once established, may be withdrawn and a new account established only if the claimant has not been credited with a waiting week under section 268.085, subdivision 1, clause (3). A determination or amended determination pursuant to section 268.101, that was issued before the withdrawal of the reemployment insurance account, shall remain in effect and shall not be voided by the withdrawal of the reemployment insurance account. A determination of disqualification requiring subsequent earnings to satisfy the disqualification shall apply to the weekly benefit amount on the new account.

(c) A reemployment insurance account shall not be established prior to the Sunday following the expiration of the benefit year on a prior reemployment insurance account.

(d) All benefits shall be payable from the fund only for weeks occurring during the benefit year.

Subd. 4. MS 1949 [Repealed, 1951 c 442 s 3]

Subd. 4. MS 1980 [Repealed, 1Sp1982 c 1 s 43]

Subd. 5. [Repealed, 1975 c 336 s 25]

Subd. 6. [Repealed, 1947 c 32 s 9]

History: (4337-25) *Ex1936 c 2 s 5; 1937 c 306 s 3; 1939 c 443 s 4; 1941 c 554 s 4; 1943 c 650 s 3; 1945 c 376 s 4; 1947 c 432 s 6; 1949 c 605 s 7,8; 1951 c 442 s 3; 1953 c 587 s 1; 1955 c 816 s 1; 1957 c 780 s 1; 1965 c 741 s 12,13; 1967 c 573 s 4; 1969 c 854 s 7; 1971 c 408 s 1; 1971 c 942 s 7,8; Ex1971 c 10 s 1; 1973 c 599 s 5; 1975 c 104 s 1; 1975 c 336 s 11; 1977 c 4 s 6; 1977 c 297 s 12; 1979 c 284 s 1; 1Sp1982 c 1 s 13-15; 1983 c 372 s 17,18; 1985 c 248 s 70; 1986 c 444; 1987 c 242 s 2; 1987 c 362 s 13-15; 1987 c 385 s 19; 1989 c 65 s 6,7; 1989 c 209 art 2 s 1; 1990 c 516 s 3; 1992 c 484 s 8; 1996 c 417 s 9,31; 1997 c 66 s 29-32,79; 1998 c 265 s 23; 1998 c 408 s 3*

268.071 [Renumbered 268.115]

268.072 [Renumbered 268.155]

268.073 Subdivision 1. [Renumbered 268.125, subd 1]

Subd. 2. [Renumbered 268.125, subd 2]

Subd. 3. [Renumbered 268.125, subd 3]

Subd. 4. [Renumbered 268.125, subd 4]

Subd. 5. [Renumbered 268.125, subd 5]

Subd. 6. [Repealed, 1994 c 503 s 7]

Subd. 6. [Repealed, 1994 c 503 s 7]

Subd. 7. [Repealed, 1997 c 66 s 81]

268.074 [Renumbered 268.135]

268.075 [Renumbered 268.145]

268.08 Subdivision 1. [Renumbered 268.085 subd 1]

Subd. 1a. [Renumbered 268.087]

Subd. 2. [Renumbered 268.085 subd 2]

Subd. 2a. [Renumbered 268.085 subd 13]

Subd. 3. [Renumbered 268.085 subd 3]

Subd. 3a. [Renumbered 268.085 subd 5]

Subd. 3b. [Renumbered 268.085 subd 6]

Subd. 4. [Renumbered 268.085 subd 4]

Subd. 5. [Repealed, 1977 c 297 s 22]

Subd. 5a. [Repealed, 1998 c 265 s 46]

Subd. 6. [Renumbered 268.085 subd 7]

Subd. 7. [Renumbered 268.085 subd 11]

Subd. 8. [Renumbered 268.085 subd 12]

Subd. 9. [Renumbered 268.085 subd 8]

Subd. 10. [Renumbered 268.085 subd 10]

Subd. 11. [Renumbered 268.085 subd 9]

268.081 [Repealed, 1993 c 4 s 34]

268.085 ELIGIBILITY REQUIREMENTS.

Subdivision 1. **Eligibility conditions.** A claimant shall be eligible to receive benefits for any week in the claimant's benefit year only if:

(1) the claimant has made a continued claim for benefits in person, by mail, by telephone, or by electronic transmission as the commissioner shall require. The commissioner may by rule adopt other requirements for a continued claim;

(2) the claimant was able to work and was available for employment, and was actively seeking employment. The claimant's weekly benefit amount shall be reduced one-fifth for each day the claimant is unable to work or is unavailable for employment.

Benefits shall not be denied by application of this clause to a claimant who is in training with the approval of the commissioner.

A claimant serving as a juror shall be considered as available for employment and actively seeking employment on each day the claimant is on jury duty;

(3) the claimant has served a waiting period of one week that the claimant is otherwise entitled to benefits. This clause shall not apply if the claimant would have been entitled to federal disaster unemployment assistance because of a disaster in Minnesota, but for the claimant's establishment of a reemployment insurance account under section 268.07; and

(4) the claimant has been participating in reemployment services, such as job search assistance services, if the claimant has been determined likely to exhaust benefits and in need of

reemployment services pursuant to a profiling system established by the commissioner, unless there is justifiable cause for the claimant's failure to participate.

Subd. 2. **Not eligible.** A claimant shall not be eligible to receive benefits for any week:

- (1) that occurs before the establishment of a reemployment insurance account;
- (2) that occurs in a period when the claimant is a student in attendance at, or on vacation from a secondary school;
- (3) that the claimant is incarcerated. The claimant's weekly benefit amount shall be reduced by one-fifth for each day the claimant is incarcerated;
- (4) that the claimant is on a voluntary leave of absence. A claimant unemployed as a result of a uniform vacation shutdown shall not be considered on a voluntary leave of absence;
- (5) that the claimant is performing services 32 hours or more, in employment, covered employment, noncovered employment, self-employment, or volunteer work regardless of the amount of any earnings; or
- (6) with respect to which the claimant is receiving, has received, or has filed a claim for reemployment insurance benefits under any law of any other state, or the federal government, but not including any federal or state benefits that are merely supplementary to those provided for under this chapter; provided that if the appropriate agency finally determines that the claimant is not entitled to the benefits, this clause shall not apply.

Subd. 3. **Deductible payments.** A claimant shall not be eligible to receive benefits for any week with respect to which the claimant is receiving, has received, or has filed a claim for payment in an amount equal to or in excess of the claimant's weekly benefit amount in the form of:

(1) termination, severance, or dismissal payment or wages in lieu of notice whether legally required or not. This clause shall apply to the first four weeks of payment and to one-half of the total number of any additional weeks of payment. This clause shall be applied to the period immediately following the last day of employment. The number of weeks of payment shall be determined as follows:

(i) if the payments are made periodically, the total of the payments to be received shall be divided by the claimant's last level of regular weekly pay from the employer; or

(ii) if the payment is made in a lump sum, that sum shall be divided by the claimant's last level of regular weekly pay from the employer;

(2) vacation allowance paid directly by the employer for a period of requested vacation, including vacation periods assigned by the employer under a collective bargaining agreement, or uniform vacation shutdown; or

(3) compensation for loss of wages under the workers' compensation law of this state or any other state or under a similar law of the United States, or under other insurance or fund established and paid for by the employer; or

(4) pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government, except social security benefits as provided for in subdivision 4. The base period employer contributed to the plan if the contribution is excluded from the definition of wages under section 268.035, subdivision 29, clause (1), or United States Code, title 26, section 3121, clause (2), of the Federal Insurance Contribution Act.

If the payment under this subdivision is less than the claimant's weekly benefit amount, the claimant shall be entitled to receive for that week, if otherwise eligible, benefits reduced by the amount of the payment; provided, further, that if the appropriate agency of this state or any other state or the federal government finally determines that the claimant is not entitled to payments, this subdivision shall not apply. If the computation of reduced benefits is not a whole dollar, it shall be rounded down to the next lower dollar.

Subd. 4. **Social security benefits.** (a) Any claimant aged 62 or over shall be required to state at the time of making an application for a reemployment insurance account and when making continued claims whether the claimant is receiving, has filed for, or intends to file for, primary social security old age or disability benefits for any week during the benefit year, and

if so there shall be deducted from the claimant's weekly benefit amount otherwise payable for that week, 50 percent of the weekly equivalent of the social security benefit.

(b) In addition to paragraph (a), a claimant shall be ineligible for benefits for any week with respect to which the claimant is receiving, has received, or has filed a claim for primary social security disability benefits, unless the social security administration has approved the payment of disability benefits while the claimant was employed.

(c) Any claimant who receives social security benefits, that would cause the claimant to be ineligible under this subdivision, for weeks that the claimant received reemployment insurance benefits shall be considered overpaid reemployment insurance benefits under section 268.18.

Subd. 5. Deductible earnings. (a) If the claimant has earnings, including holiday pay, with respect to any week, from employment, covered employment, noncovered employment, self-employment, or volunteer work, equal to or in excess of the claimant's weekly benefit amount, the claimant shall be ineligible for benefits for that week.

(b) If the claimant has earnings, including holiday pay, with respect to any week, from employment, covered employment, noncovered employment, self-employment, or volunteer work, that is less than the claimant's weekly benefit amount, the following shall be deducted from the claimant's weekly benefit amount:

(1) that amount in excess of \$50 if the claimant's earnings were \$200 or less, and that amount in excess of 25 percent of the claimant's earnings if those earnings were more than \$200; and

(2) that amount in excess of \$200 for earnings from service in the National Guard or a United States military reserve unit.

The resulting benefit, if not a whole dollar, shall be rounded to the next lower dollar.

(c) No deduction shall be made from a claimant's weekly benefit amount for earnings from service as a volunteer firefighter or volunteer ambulance service personnel. No deduction shall be made for jury duty pay.

(d) The claimant may report deductible earnings on continued claims for benefits at the nearest whole dollar amount.

Subd. 6. Receipt of back pay. Back pay received by a claimant with respect to any weeks occurring in the 104 weeks prior to the payment of the back pay shall be deducted from benefits paid for those weeks.

The amount deducted shall not reduce the benefits that the claimant is otherwise eligible for that week below zero. If the amount of benefits after the deduction of back pay is not a whole dollar amount, it shall be rounded to the next lower dollar.

If the back pay awarded the claimant is reduced by benefits paid, the amounts withheld shall be: (a) paid by the employer into the fund within 30 days of the award and are subject to the same collection procedures that apply to past due taxes under this chapter; (b) applied to benefit overpayments resulting from the payment of the back pay; (c) credited to the claimant's maximum amount of benefits payable in a benefit year that includes the weeks for which back pay was deducted. Benefit charges for those weeks shall be removed from the employer's account as of the calendar quarter that the fund receives payment.

Payments to the fund under this subdivision shall be considered as made by the claimant.

Subd. 7. School employees. (a) No wage credits in any amount from any employment with any educational institution or institutions earned while in an instructional, research, or principal administrative capacity may be used for benefit purposes for any week beginning during a period between two successive academic years or terms, or during a period between two regular but not successive terms, if:

(1) the claimant had employment in any instructional, research, or principal administrative capacity for any educational institution or institutions in the first of the academic years or terms; and

(2) there is a contract or a reasonable assurance that the claimant will have employment in any instructional, research, or principal administrative capacity for any educational insti-

tution or institutions in the second of the academic years or terms, that is substantially similar to the employment of the first academic years or terms;

(b) With respect to employment in any capacity other than those described in paragraph (a), including educational assistants, benefits shall not be paid based upon wage credits from any educational institution or institutions for any week beginning during a period between two successive academic years or terms if the claimant was employed in the first academic year or term by any educational institution or institutions and there is reasonable assurance that the claimant will be employed under similar terms and conditions by any educational institution or institutions in the second academic year or term. A claimant who has an agreement for a definite period of employment between academic years or terms shall be eligible for any weeks within that period the educational institution or institutions fail to provide employment. If benefits are denied to any claimant under this paragraph and the claimant was not offered an opportunity to perform the employment in the second of the academic years or term, the claimant shall be entitled to retroactive benefits for each week that the claimant filed a timely continued claim for benefits, but benefits were denied solely because of this paragraph;

(c) With respect to employment described in paragraph (a) or (b), benefits based upon wage credits from any educational institution or institutions shall not be paid for any week beginning during an established and customary vacation period or holiday recess if the claimant was employed in the period immediately before the vacation period or holiday recess, and there is a reasonable assurance that the claimant will be employed in the period immediately following the vacation period or holiday recess;

(d) Paragraphs (a), (b), and (c) shall apply to employment with an educational service agency if the claimant performed the services at an educational institution or institutions. For purposes of this paragraph, "educational service agency" means a governmental agency or entity established and operated exclusively for the purpose of providing services to one or more educational institutions;

(e) Paragraphs (a) to (d) shall apply to employment with Minnesota or a political subdivision, or a nonprofit organization, if the services are provided to or on behalf of an educational institution or institutions.

(f) Paragraphs (a), (b), and (c) shall apply beginning the Sunday of the week that there is a contract or reasonable assurance of employment.

(g) Employment with multiple education institutions shall be aggregated for purposes of application of this subdivision.

(h) An "educational institution" is an educational entity operated by Minnesota or a political subdivision or an instrumentality thereof, or an educational organization described in United States Code, title 26, section 501(c)(3) of the federal Internal Revenue Code, and exempt from income tax under section 501(a).

Subd. 8. Services for school contractors. Wage credits from an employer are subject to subdivision 7, paragraphs (b) and (c), if:

(1) the employment was provided pursuant to a contract between the employer and an educational institution;

(2) the contract was for services that the educational institution could have had performed by its employees; and

(3) the claimant was notified in writing of the provisions of this subdivision prior to or at the time of beginning the employment.

Subd. 9. Business owners. Wage credits from an employer may not be used for benefit purposes by any claimant who:

(1) individually, jointly, or in combination with the claimant's spouse, parent, or child owns or controls directly or indirectly 25 percent or more interest in the employer, or is the spouse, parent, or minor child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employer; and

(2) is not permanently separated from employment.

This subdivision is effective when the claimant has been paid four times the claimant's weekly benefit amount in the current benefit year.

Subd. 10. Seasonal employment. (a) If a claimant has wage credits from seasonal employment, benefits shall be payable only if the claimant can establish a reemployment insurance account under section 268.07, subdivision 2, excluding the wage credits from seasonal employment. For purposes of this subdivision, "seasonal employment" means employment with a single employer in the recreation or tourist industry that is available with the employer for 15 consecutive weeks or less each calendar year.

(b) Wage credits from seasonal employment may not be used for benefit purposes during weeks outside the normal season.

Subd. 11. Professional athletes. Benefits shall not be paid to a claimant on the basis of any wage credits from employment that substantially consists of participating in sports or athletic events or training or preparing to participate for any week that begins during the period between two successive sport seasons (or similar periods) if the claimant was so employed in the first season (or similar period) and there is a reasonable assurance that the claimant will be so employed in the following season (or similar periods).

Subd. 12. Aliens. (a) An alien shall be ineligible for benefits for any week the alien is not authorized to work in the United States under federal law.

(b) Benefits shall not be paid on the basis of wage credits earned by an alien unless the alien (1) was lawfully admitted for permanent residence at the time of the employment, (2) was lawfully present for the purposes of the employment, or (3) was permanently residing in the United States under color of law at the time of the employment including section 212(d)(5) of the Immigration and Nationality Act.

(c) Any data or information required of claimants applying for benefits to determine eligibility because of their alien status shall be uniformly required from all claimants.

Subd. 13. Suspension from employment. (a) A claimant who has been suspended from employment for 30 calendar days or less, as a result of misconduct as defined under section 268.095, subdivision 6, shall be ineligible for benefits beginning the Sunday of the week that the claimant was suspended and continuing for the duration of the suspension.

(b) A suspension from employment for more than 30 calendar days shall be considered a discharge from employment under section 268.095, subdivision 5.

History: (4337-26) *Ex1936 c 2 s 6; 1937 c 43 s 2; 1937 c 306 s 4; 1939 c 443 s 5; 1941 c 554 s 5; 1943 c 650 s 4; 1945 c 376 s 5; 1949 c 605 s 9; 1953 c 97 s 9; 1953 c 699 s 10; 1965 c 741 s 14-16; 1969 c 6 s 34; 1971 c 942 s 9,10; 1973 c 599 s 6-8; 1975 c 104 s 2; 1975 c 336 s 13-15; 1975 c 359 s 23; 1976 c 163 s 59; 1976 c 271 s 78; 1977 c 4 s 7; 1977 c 297 s 15-18; 1978 c 612 s 1; 1979 c 24 s 1; 1979 c 181 s 9,10,19; 1980 c 508 s 8; 1Sp1982 c 1 s 23-25; 1983 c 290 s 168; 1983 c 372 s 20-24; 1985 c 248 s 44; 1986 c 444; 1987 c 362 s 18; 1987 c 384 art 1 s 55; 1987 c 385 s 20-22; 1989 c 209 art 2 s 1; 1989 c 282 art 2 s 169; 1990 c 516 s 4; 1991 c 265 art 11 s 22; 1992 c 484 s 10; 1993 c 67 s 3,4; 1994 c 488 s 2,3,8; 1995 c 54 s 8,9; 1995 c 231 art 1 s 32; 1996 c 417 s 18,31; 1997 c 66 s 36-42; 1998 c 265 s 24,45*

268.087 BENEFITS DUE DECEASED PERSONS.

If benefits are due and payable at the time of a claimant's death, those benefits may, upon application, be paid to the personal representative of the estate of the deceased. In the event that no personal representative is appointed, the benefits may, upon application be paid in the following order: (1) the surviving spouse, (2) the surviving child or children, or (3) the surviving parent or parents.

An individual seeking payment shall complete an application prescribed by the commissioner and the payment of benefits shall discharge the obligations to the claimant and no other individual shall claim or assert any right to those benefits.

History: (4337-26) *Ex1936 c 2 s 6; 1937 c 43 s 2; 1937 c 306 s 4; 1939 c 443 s 5; 1941 c 554 s 5; 1943 c 650 s 4; 1945 c 376 s 5; 1949 c 605 s 9; 1953 c 97 s 9; 1953 c 699 s 10; 1965 c 741 s 14-16; 1969 c 6 s 34; 1971 c 942 s 9,10; 1973 c 599 s 6-8; 1975 c 104 s 2; 1975 c 336 s 13-15; 1975 c 359 s 23; 1976 c 163 s 59; 1976 c 271 s 78; 1977 c 4 s 7; 1977 c 297 s 15-18; 1978 c 612 s 1; 1979 c 24 s 1; 1979 c 181 s 9,10,19; 1980 c 508 s 8; 1Sp1982 c 1 s 23-25; 1983 c 290 s 168; 1983 c 372 s 20-24; 1985 c 248 s 44;*

1986 c 444; 1987 c 362 s 18; 1987 c 384 art 1 s 55; 1987 c 385 s 20-22; 1989 c 209 art 2 s 1; 1989 c 282 art 2 s 169; 1990 c 516 s 4; 1991 c 265 art 11 s 22; 1992 c 484 s 10; 1993 c 67 s 3,4; 1994 c 488 s 2,3,8; 1995 c 54 s 8,9; 1995 c 231 art 1 s 32; 1996 c 417 s 18,31; 1997 c 66 s 36-42; 1998 c 265 s 24,45

268.09 Subdivision 1. [Repealed, 1997 c 66 s 81]

Subd. 1a. [Renumbered 268.095 subd 1]

Subd. 2. [Repealed, 1997 c 66 s 81]

Subd. 2a. [Renumbered 268.095 subd 2]

Subd. 3. [Renumbered subd 18]

Subd. 4. [Repealed, 1997 c 66 s 81]

Subd. 5. [Repealed, 1997 c 66 s 81]

Subd. 6. [Repealed, 1997 c 66 s 81]

Subd. 7. [Repealed, 1997 c 66 s 81]

Subd. 8. [Repealed, 1997 c 66 s 81]

Subd. 9. [Renumbered 268.095 subd 3]

Subd. 10. [Renumbered 268.095 subd 4]

Subd. 11. [Renumbered 268.095 subd 5]

Subd. 12. [Renumbered 268.095 subd 6]

Subd. 13. [Renumbered 268.095 subd 7]

Subd. 14. [Renumbered 268.095 subd 8]

Subd. 15. [Renumbered 268.095 subd 9]

Subd. 16. [Renumbered 268.095 subd 10]

Subd. 17. [Renumbered 268.095 subd 11]

Subd. 18. [Renumbered 268.095 subd 12]

268.095 DISQUALIFICATION PROVISIONS.

Subdivision 1. **Quit.** A claimant who quits employment shall be disqualified from benefits:

(1) unless the claimant quit the employment because of a good reason caused by the employer;

(2) unless the claimant quit the employment to accept other covered employment that provided substantially higher wages or substantially better conditions of employment or both, but the claimant did not work long enough at the other employment to have sufficient subsequent earnings to satisfy the disqualification that would otherwise be imposed;

(3) unless the claimant quit the employment within 30 calendar days of beginning the employment because the employment was unsuitable for the claimant;

(4) unless the employment was unsuitable for the claimant and the claimant quit to enter approved training;

(5) unless the employment was part time and the claimant had full-time employment in the base period, that the claimant separated from because of nondisqualifying reasons, sufficient to meet the minimum requirements to establish a reemployment insurance account under section 268.07; or

(6) unless the claimant quit the employment because the claimant's serious illness made it medically necessary that the claimant quit, provided that the claimant made reasonable efforts to remain in that employment in spite of the serious illness.

Reasonable efforts to remain in that employment require that the claimant inform the employer of the serious illness and request accommodation.

A claimant who quit employment because of the claimant's serious illness of chemical dependency, has not made reasonable efforts to remain in that employment if the claimant has previously been professionally diagnosed as chemically dependent, or has previously voluntarily submitted to treatment for chemical dependency, and has failed to make consistent efforts to control the chemical dependency.

Subd. 2. **Quit defined.** A quit from employment occurs when the decision to end the employment was, at the time the employment ended, the employee's. An employee who seeks to withdraw a previously submitted notice of quitting shall be considered to have quit the employment if the employer does not agree that the notice may be withdrawn.

Subd. 3. **Good reason caused by the employer defined.** (a) A good reason caused by the employer for quitting is a reason:

(1) that is directly related to the employment and for which the employer is responsible; and

(2) that is significant and would compel an average, reasonable worker to quit.

(b) A claimant has a good reason caused by the employer for quitting if it results from sexual harassment. Sexual harassment means unwelcome sexual advances, requests for sexual favors, sexually motivated physical contact or other conduct or communication of a sexual nature when:

(1) the claimant's submission to the conduct or communication is made a term or condition of the employment;

(2) the claimant's submission to or rejection of the conduct or communication is the basis for decisions affecting employment; or

(3) the conduct or communication has the purpose or effect of substantially interfering with a claimant's work performance or creating an intimidating, hostile, or offensive working environment and the employer knows or should know of the existence of the harassment and fails to take timely and appropriate action.

Subd. 4. **Discharge.** A claimant who is discharged from employment by an employer shall not be disqualified from benefits:

(1) unless the claimant was discharged because of misconduct that interfered with and adversely affected that employment. This clause shall not apply if:

(i) the misconduct was a direct result of the claimant's serious illness provided that the claimant made reasonable efforts to remain in that employment in spite of the serious illness.

Reasonable efforts to remain in that employment require that the claimant inform the employer of the serious illness and request accommodation.

If the misconduct was a direct result of the claimant's serious illness of chemical dependency, the claimant has not made reasonable efforts to remain in that employment if the claimant has previously been professionally diagnosed chemically dependent or the claimant has previously voluntarily submitted to treatment for chemical dependency and has failed to make consistent efforts to control the chemical dependency.

This subclause shall not apply if the misconduct was a violation of section 169.121, 169.1211, or 169.123; or

(ii) the employment was part time and the claimant had full-time employment in the base period, that the claimant separated from because of nondisqualifying reasons, sufficient to meet the minimum requirements to establish a reemployment insurance account under section 268.07;

(2) unless the claimant was discharged because of gross misconduct that interfered with and adversely affected that employment. For the purpose of this clause, "gross misconduct" means:

(i) the commission of any act that amounts to a gross misdemeanor or felony; or

(ii) for an employee of a facility as defined in section 626.5572, gross misconduct includes an act of patient or resident abuse, financial exploitation, or recurring or serious neglect, as defined in section 626.5572 and applicable rules.

If a claimant is convicted of a gross misdemeanor or felony for the same act or acts for which the claimant was discharged, it is gross misconduct; or

(3) if the claimant was discharged because the claimant gave notice of intention to quit the employment within 30 calendar days. This clause shall be effective only through the end of the calendar week that includes the intended date of quitting. Thereafter the separation from employment shall be considered a quit of employment by the claimant, and a disqualification, if any, shall begin with the Sunday of the week following the week that includes the intended date of quitting.

Subd. 5. **Discharge defined.** A discharge from employment occurs when any words or actions by an employer would lead a reasonable employee to believe that the employee's services are no longer desired by the employer. A layoff due to lack of work shall be considered a discharge. A suspension from employment of more than 30 calendar days shall be considered a discharge.

Subd. 6. **Misconduct defined.** Misconduct is intentional conduct showing a disregard of:

- (1) the employer's interest;
- (2) the standards of behavior that an employer has the right to expect of the employee; or
- (3) the employee's duties and obligations to the employer. Misconduct also includes negligent conduct by an employee demonstrating a substantial lack of concern for the employment. Inefficiency, inadvertence, simple unsatisfactory conduct, or poor performance as a result of inability or incapacity are not misconduct.

Subd. 7. **Act or omissions after separation.** Except as provided for under subdivision 8, a claimant shall not be disqualified from benefits for any acts or omissions occurring after the claimant's separation from employment with the employer.

Subd. 8. **Offers of employment.** (a) A claimant shall be disqualified from benefits if the claimant, without good cause:

- (1) failed to apply for available, suitable employment of which the claimant was advised by the commissioner or an employer;
- (2) failed to accept suitable employment when offered; or
- (3) avoided an offer of suitable employment.

(b) The claimant shall not be disqualified from benefits under paragraph (a) if the claimant:

- (1) was in approved training; or
- (2) formerly worked for the employer and the claimant's last separation from employment with the employer occurred prior to the commencement of a strike or other labor dispute, was permanent or for an indefinite period, and the claimant failed to apply for or accept reemployment because a strike or other labor dispute was in progress at the establishment where the claimant was previously employed by that employer.

Subd. 9. **Suitable employment defined.** (a) Suitable employment is employment in the claimant's labor market area that is reasonably related to the claimant's qualifications. In determining whether any employment is suitable for a claimant, the degree of risk involved to the health and safety, physical fitness, prior training, experience, length of unemployment, prospects for securing local employment in the claimant's customary occupation, and the distance of the employment from the claimant's residence shall be considered.

(b) No employment shall be considered suitable if:

- (1) the position offered is vacant due directly to a strike, lockout, or other labor dispute;
- (2) the wages, hours, or other conditions of employment are substantially less favorable than those prevailing for similar employment in the locality; or
- (3) as a condition of becoming employed, the claimant would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

Subd. 10. **Disqualification duration.** (a) A disqualification from the payment of benefits under subdivisions 1, 4, and 8 shall be for the duration of the claimant's unemployment and until the end of the calendar week that the claimant had total earnings in subsequent covered employment of eight times the claimant's weekly benefit amount.

(b) Any disqualification imposed under subdivisions 1 and 4 shall begin on the Sunday of the week that the claimant became separated from employment. Any disqualification imposed under subdivision 8 shall begin on the Sunday of the week the claimant failed to apply for, accept, or avoided employment.

(c) Notwithstanding paragraph (a), if the claimant was discharged from employment because of gross misconduct, the disqualification shall be for the duration of the claimant's unemployment and until the end of the calendar week that the claimant had total earnings in subsequent covered employment of 12 times the claimant's weekly benefit amount. In addition, wage credits from that employment shall be canceled.

Subd. 11. **Application.** This section shall apply to:

(1) all covered employment, full time or part time, temporary or limited duration, permanent or indefinite duration, that occurred during the base period, the period between the end of the base period and the effective date of the reemployment insurance account, or the benefit year, except as provided for in subdivisions 1, clause (5); and 4, clause (1)(ii); or

(2) all covered employment occurring in this state, and employment covered under a reemployment insurance program, (i) of any other state or (ii) established by an act of Congress.

Subd. 12. **Labor dispute.** (a) A claimant who has left or partially or totally lost employment with an employer because of a strike or other labor dispute at the establishment where the claimant is or was employed shall be disqualified from benefits:

(1) until the end of the calendar week that the strike or labor dispute was in active progress if the claimant is participating in or directly interested in the strike or labor dispute; or

(2) until the end of the calendar week that the strike or labor dispute commenced if the claimant is not participating in or directly interested in the strike or labor dispute.

Participation includes the failure or refusal by a claimant to accept and perform available and customary work at the establishment.

(b) A claimant who has left or partially or totally lost employment with an employer because of a jurisdictional controversy between two or more labor organizations at the establishment where the claimant is or was employed shall be disqualified for benefits until the end of the calendar week that the jurisdictional controversy was in progress.

(c) A claimant shall not be disqualified from benefits under this subdivision if:

(1) the claimant becomes unemployed because of a strike caused by an employer's willful failure to observe the terms of the safety and health section of a union contract or failure to comply with an official citation for a violation of federal and state laws involving occupational safety and health;

(2) the claimant becomes unemployed because of a lockout; or

(3) the claimant is discharged during the period of negotiation and prior to the commencement of a strike or other labor dispute.

(d) A quit from employment by the claimant during the time that the strike or other labor dispute is in active progress at the establishment shall not be considered to terminate the claimant's participation in or direct interest in the strike or other labor dispute for purposes of this subdivision.

(e) For the purpose of this subdivision, the term "labor dispute" shall have the same definition as provided in section 179.01, subdivision 7.

History: (4337-27) *Ex1936 c 2 s 7; 1937 c 401 s 1; 1939 c 443 s 6; 1941 c 554 s 6; 1943 c 650 s 5; 1945 c 376 s 6; 1947 c 432 s 7; 1965 c 741 s 17; 1967 c 342 s 1; 1967 c 573 s 5; 1969 c 42 s 1; 1971 c 942 s 11; 1973 c 23 s 1; 1973 c 599 s 9; 1974 c 477 s 1; 1975 c 336 s 16; 1977 c 4 s 8; 1977 c 242 s 1; 1977 c 297 s 19; 1978 c 618 s 1; 1979 c 181 s 11-13; 1980 c 508 s 9; 1982 c 619 s 1; 1Sp1982 c 1 s 26-28; 1983 c 372 s 26,27; 1986 c 444; 1987 c 362 s 19,20; 1987 c 385 s 23,24; 1989 c 65 s 8; 1989 c 209 art 2 s 1; 1992 c 484 s 11,12; 1993 c 67 s 5-7; 1994 c 488 s 4,8; 1995 c 229 art 3 s 15; 1996 c 417 s 19,20,31; 1997 c 66 s 43-54,79; 1998 c 265 s 25-29,44,45*

268.10 [Repealed, 1996 c 417 s 32]

268.101 DETERMINATIONS ON DISQUALIFICATION AND ELIGIBILITY.

Subdivision 1. **Notification.** (a) Upon application for a reemployment insurance account, each claimant shall report the names of all employers and the reasons for no longer working for all employers during the claimant's last 30 days of employment.

(b) Upon establishment of a reemployment insurance account, the commissioner shall notify, by mail or electronic transmission, all employers the claimant was employed by during the claimant's last 30 days of employment prior to making an application and all base period employers and determined successors to those employers under section 268.051, subdivision 4. An employer shall have ten calendar days after the sending of the notice to make a

protest in a manner prescribed by the commissioner raising any issue of disqualification or any issue of eligibility. An employer shall be informed of the effect that failure to timely protest may have on the employer charges. A protest made more than ten calendar days after sending of the notice shall be considered untimely.

(c) Each claimant shall report any employment, loss of employment, and offers of employment received, during those weeks the claimant made continued claims for benefits. Each claimant who stops making continued claims during the benefit year and later begins making continued claims during that same benefit year shall report the name of any employer the claimant worked for during the period between the making of continued claims, up to a period of the last 30 days of employment, and the reason the claimant stopped working for the employer. The claimant shall report any offers of employment during the period between the making of continued claims. Those employers from which the claimant has reported a loss of employment or an offer of employment pursuant to this paragraph shall be notified by mail or electronic transmission. An employer shall have ten calendar days after the sending of the notice to make a protest in a manner prescribed by the commissioner raising any issue of disqualification or any issue of eligibility. An employer shall be informed of the effect that failure to timely protest may have on the employer charges. A protest made more than ten calendar days after sending of the notice shall be considered untimely.

(d) The purpose for requiring the claimant to report the name of all employers and the reason for no longer working for all employers during the claimant's "last 30 days of employment" is for the commissioner to obtain information from a claimant on all issues that have the potential of disqualifying the claimant from benefits under section 268.095. If the reason given by the claimant for no longer working for an employer is a discharge, other than a lay-off due to lack of work, the claimant shall be required to state all the facts about the cause of the discharge, if known.

Subd. 2. Disqualification determination. (a) The commissioner shall promptly determine any issue of disqualification raised by a timely protest made by an employer, and mail to the claimant and that employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall set forth the effect on employer charges.

(b) The commissioner shall promptly determine any issue of disqualification raised by information obtained from a claimant pursuant to subdivision 1, paragraph (a) or (c), and mail to the claimant and employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall set forth the effect on employer charges.

(c) The commissioner shall promptly determine any issue of disqualification raised by an untimely protest made by an employer and mail to the claimant and that employer at the last known address a determination of disqualification or a determination of nondisqualification as is appropriate. The determination shall set forth the effect on employer charges. Notwithstanding section 268.095, any disqualification imposed as a result of determination issued pursuant to this paragraph shall begin the Sunday two weeks following the week that the untimely protest was made. Notwithstanding any provisions to the contrary, any relief of employer charges as a result of a determination issued pursuant to this paragraph shall begin the Sunday two weeks following the week that the untimely protest was made.

(d) If any time within 24 months from the establishment of a reemployment insurance account the commissioner finds that a claimant failed to report any employment, loss of employment, or offers of employment that were required to be provided by the claimant under this section, the commissioner shall promptly determine any issue of disqualification on that loss of employment or offer of employment and mail to the claimant and involved employer at the last known address a determination of disqualification or a determination of nondisqualification, as is appropriate. The determination shall set forth the effect on employer charges.

This paragraph shall not apply if the involved employer was notified and given the opportunity to protest pursuant to subdivision 1, paragraph (b) or (c).

(e) A determination of disqualification or a determination of nondisqualification shall be final unless an appeal is filed by the claimant or notified employer within 30 calendar days

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after mailing. The determination shall contain a prominent statement indicating in clear language the method of appealing, the time within which an appeal must be made, and the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(f) An issue of disqualification for purposes of this section shall include any reason for no longer working for an employer other than a layoff due to lack of work, any question of a disqualification from benefits under section 268.095, any question of an exception to disqualification under section 268.095, any question of benefit charge to an employer under section 268.047, and any question of an otherwise imposed disqualification that a claimant has had subsequent earnings sufficient to satisfy the disqualification.

(g) Notwithstanding the requirements of this subdivision, the commissioner is not required to mail to a claimant a determination of nondisqualification where the claimant has had subsequent earnings sufficient to satisfy any otherwise potential disqualification.

Subd. 3. Eligibility determination. (a) The commissioner shall promptly determine any issue of eligibility raised by a timely protest made by an employer and mail to the claimant and that employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

(b) The commissioner shall promptly determine any issue of eligibility raised by information obtained from a claimant and mail to the claimant and any involved employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

(c) The commissioner shall promptly determine any issue of eligibility raised by an untimely protest made by an employer and mail to the claimant and that employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate. Any denial of benefits imposed as a result of determination issued pursuant to this paragraph shall begin the Sunday two weeks following the week that the untimely protest was made.

(d) If any time within 24 months from the establishment of a reemployment insurance account the commissioner finds the claimant failed to provide requested information regarding the claimant's eligibility for benefits, the commissioner shall determine the issue of eligibility and mail to the claimant and any involved employer at the last known address a determination of eligibility or a determination of ineligibility, as is appropriate.

This paragraph shall not apply if the involved employer was notified, was aware, or should have been aware of the issue of eligibility at the time of notification, and was given the opportunity to protest pursuant to subdivision 1, paragraph (b) or (c).

(e) A determination of eligibility or determination of ineligibility shall be final unless an appeal is filed by the claimant or notified employer within 30 calendar days after mailing. The determination shall contain a prominent statement indicating in clear language the method of appealing, the time within which an appeal must be made, and the consequences of not appealing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(f) An issue of eligibility for purposes of this section shall include any question of denial of benefits under sections 268.085, 268.115, 268.125, 268.135, and 268.155.

Subd. 3a. Direct hearing. Notwithstanding any provision of sections 268.03 to 268.23, the commissioner may refer any issue of disqualification, any issue of eligibility, or any other issue, directly for hearing in accordance with section 268.105, subdivision 1. The status of the issue shall be the same as if a determination had been made and an appeal filed.

Subd. 4. Amended determination. Unless an appeal has been filed, the commissioner, on the commissioner's own motion, may reconsider a determination of disqualification or nondisqualification or a determination of eligibility or ineligibility that has not become final and issue an amended determination. An amended determination shall not be done at the request of a claimant or an employer. Any amended determination shall be mailed to the claimant and any involved employer at the last known address. Any amended determination shall be final unless an appeal is filed by the claimant or notified employer within 30 calendar days after mailing. Proceedings on the appeal shall be conducted in accordance with section 268.105.

Subd. 5. **Prompt payment.** If a determination or amended determination awards benefits to a claimant, the benefits shall be promptly paid regardless of any appeal period or any appeal having been filed.

Subd. 6. **Overpayment.** A determination or amended determination that holds a claimant disqualified or ineligible for benefits for periods a claimant has been paid benefits is an overpayment of those benefits subject to section 268.18.

History: 1996 c 417 s 21; 1997 c 66 s 55-58,79; 1998 c 265 s 30

268.103 APPEALS BY TELEPHONE; ELECTRONIC TRANSMISSION.

Subdivision 1. **In commissioner's discretion.** (a) Unless the statutory provision providing for an appeal requires that the appeal be in writing, the commissioner shall have the discretion to allow an appeal to be made by telephone or by electronic transmission. If the commissioner allows an appeal to be made by telephone or by electronic transmission, that shall be clearly set out on the determination or decision subject to appeal.

(b) The commissioner may restrict the conditions under which an appeal by telephone or electronic transmission may be made. Any restrictions as to days, hours, telephone number, electronic transmission address, or other conditions, shall be clearly set out on the determination or decision subject to appeal.

(c) All information requested by the commissioner when an appeal is made by telephone or by electronic transmission must be supplied or the communication will not constitute an appeal.

Subd. 2. **Appeal in writing.** An appeal may be made in writing even if an appeal by telephone or by electronic transmission is allowed.

Subd. 3. **Exclusive means of appeal.** A written appeal, or if allowed an appeal by telephone or electronic transmission, shall be the only manner of appeal.

History: 1997 c 66 s 59

268.105 REEMPLOYMENT INSURANCE HEARINGS; APPEALS.

Subdivision 1. **Hearing.** (a) Upon appeal the department shall set a time and place for a de novo hearing and give any involved claimant and any involved employer written notice, by mail, not less than ten calendar days prior to the date of the hearing.

(b) The commissioner shall by rule adopt a procedure by which reemployment insurance judges hear and decide appeals, subject to further appeal to the commissioner. The rules need not conform to common law or statutory rules of evidence and other technical rules of procedure. The written report of any employee of the department, except a determination, made in the regular course of the performance of the employee's duties, shall be competent evidence of the facts contained in it.

(c) After the conclusion of the hearing, upon the evidence presented, the reemployment insurance judge shall mail findings of fact and decision to all involved parties. The reemployment insurance judge's decision is final unless a further appeal is filed pursuant to subdivision 3.

Subd. 2. **Reemployment insurance judges.** The commissioner shall designate regular salaried employees of the department as impartial reemployment insurance judges to conduct hearings on appeals. The commissioner or authorized representative may personally hear or transfer to another reemployment insurance judge any proceedings pending before a reemployment insurance judge. Any proceedings removed to the commissioner or authorized representative shall be heard in accordance with subdivision 1.

Subd. 3. **Commissioner review.** (a) Within 30 calendar days after mailing of the reemployment insurance judge's decision, any involved party may appeal and obtain a review by the commissioner or an authorized representative. The commissioner within the same period of time may on the commissioner's own motion order a review of a decision.

(b) Upon review, the commissioner shall, on the basis of the evidence submitted at the hearing before the reemployment insurance judge, make findings of fact and decision, or remand the matter back to a reemployment insurance judge for the taking of additional evidence and new findings and decision based on all the evidence. The commissioner may disre-

gard the findings of fact of the reemployment insurance judge and examine the evidence and make any findings of fact as the evidence may, in the judgment of the commissioner require, and make any decision as the facts found by the commissioner require.

(c) The commissioner shall mail to any involved party the findings of fact and decision. The decision of the commissioner is final unless judicial review is sought as provided by subdivision 7.

Subd. 3a. Decisions. (a) If a reemployment insurance judge's decision or the commissioner's decision awards benefits to a claimant, the benefits shall be promptly paid regardless of any appeal period or any appeal having been filed.

(b) If a reemployment insurance judge's decision modifies or reverses a determination awarding benefits to a claimant, any benefits paid pursuant to the determination is an overpayment of those benefits subject to section 268.18.

(c) If a commissioner's decision modifies or reverses a reemployment insurance judge's decision awarding benefits to a claimant, any benefits paid pursuant to the reemployment insurance judge's decision is an overpayment of those benefits subject to section 268.18.

(d) If the commissioner affirms a reemployment insurance judge's decision on an issue of disqualification that awards benefits to a claimant, the commissioner's decision, if finally reversed by the Minnesota Court of Appeals or the Supreme Court of Minnesota, shall not result in a disqualification of the claimant from benefits under section 268.095.

(e) If the commissioner, pursuant to subdivision 3, remands a matter to a reemployment insurance judge for the taking of additional evidence, the prior reemployment insurance judge's decision shall continue to be enforced until new findings of fact and decision are made by a reemployment insurance judge.

Subd. 4. Testimonial powers. In the discharge of the duties imposed by this section, the reemployment insurance judge, the commissioner, or authorized representative, may administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of witnesses and the production of books, papers, correspondence, memoranda, and other records considered necessary as evidence in connection with the subject matter of the hearing. The subpoenas shall be enforceable through the district court in the district in which the subpoena is issued. Witnesses, other than an involved claimant or involved employer or officers and employees of an involved employer, subpoenaed pursuant to this section shall be allowed fees the same as witness fees in a civil action in district court. These fees shall be considered a part of the expense of administering this chapter.

Subd. 5. Use of information. (a) All testimony at any hearing conducted pursuant to subdivision 1 shall be recorded. A copy of any recorded testimony and exhibits received into evidence at the hearing shall, upon request, or upon directive of the commissioner, be furnished to a party at no cost. If requested, the representative of a commissioner shall make available a device for listening to the recording.

(b) Testimony obtained under subdivision 1, may not be used or considered in any civil, administrative, or contractual proceeding, except by a local, state, or federal human rights agency with enforcement powers, unless the proceeding is initiated by the department.

(c) No findings of fact or decision issued by a reemployment insurance judge or the commissioner may be held conclusive or binding or used as evidence in any separate or subsequent action in any other forum, except proceedings provided for under this chapter, regardless of whether the action involves the same or related parties or involves the same facts.

Subd. 6. Representation; fees. In any proceeding under these sections, a party may be represented by any agent. Except for services provided by an attorney-at-law, a claimant shall not be charged fees or costs of any kind in a proceeding before a reemployment insurance judge, the commissioner, or by any court or any of its officers.

Subd. 7. Court of appeals; attorney for commissioner. (a) The court of appeals may, by writ of certiorari to the commissioner, review any decision of the commissioner provided a petition for the writ is filed and served upon the commissioner and any other involved party within 30 calendar days of the mailing of the commissioner's decision.

(b) Any involved employer, upon the service of the writ shall furnish a cost bond to the commissioner in accordance with the rules of civil appellate procedure. Upon review before

the court of appeals, the commissioner shall, if requested, furnish to the claimant at no cost a written transcript of the testimony received at the hearing conducted pursuant to subdivision 1.

(c) The commissioner shall be considered to be a party to any judicial action involving any decision and shall be represented by any qualified attorney who is a regular salaried employee of the department and has been designated by the commissioner for that purpose or, at the commissioner's request, by the attorney general.

History: 1995 c 54 s 11; 1996 c 417 s 22,31; 1997 c 66 s 60; 1998 c 265 s 31,44

268.11 [Renumbered 268.042]

268.115 [Expired]

268.115 EXTENDED BENEFITS.

Subdivision 1. **Definitions.** As used in this section, unless the context clearly requires otherwise:

(1) **Extended benefit period.** "Extended benefit period" means a period which

(a) Begins with the third week after a week for which there is a state "on" indicator; and

(b) Ends with either of the following weeks, whichever occurs later: The third week after the first week for which there is a state "off" indicator; or the 13th consecutive week of the period;

Provided, that no extended benefit period may begin before the 14th week following the end of a prior extended benefit period which was in effect with respect to this state.

(2) **State "on" indicator.** There is a "state 'on' indicator" for this state for a week if the commissioner determines, in accordance with the regulations of the United States Secretary of Labor, that for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under this law

(a) equaled or exceeded 120 percent of the average of such rates for the corresponding 13-week period ending in each of the preceding two calendar years, and

(b) equaled or exceeded five percent.

The determination of whether there has been a state "on" indicator beginning any extended benefit period may be made as provided in clauses (a) and (b) above or a "state 'on' indicator" shall exist if the rate described in clause (b) equaled or exceeded six percent irrespective of whether the percentage requirement provided by clause (a) is met or exceeded.

(3) **State "off" indicator.** There is a "state 'off' indicator" for this state for a week if, for the period consisting of such week and the immediately preceding 12 weeks, the rate of insured unemployment is less than six percent and the requirements for a "state 'on' indicator" under clause (2) are not satisfied.

(4) **Rate of insured unemployment.** "Rate of insured unemployment," for purposes of clauses (2) and (3), means the percentage derived by dividing the average weekly number of individuals filing claims for regular benefits in this state for weeks of unemployment with respect to the most recent 13 consecutive week period, as determined by the commissioner on the basis of the commissioner's reports to the United States Secretary of Labor, by the average monthly employment covered under this law for the first four of the most recent six completed calendar quarters ending before the end of such 13-week period.

(5) **Regular benefits.** "Regular benefits" means benefits payable to an individual under this law or under any other state law (including benefits payable to federal civilian employees and to ex-servicemen pursuant to United States Code, title 5, chapter 85) other than extended benefits and additional benefits.

(6) **Extended benefits.** "Extended benefits" means benefits (including benefits payable to federal civilian employees and to ex-servicemen pursuant to United States Code, title 5, chapter 85) payable to an individual under the provisions of this section for weeks of unemployment in the individual's eligibility period.

(7) **Additional benefits.** "Additional benefits" means benefits payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors under the provisions of any state law.

(8) **Eligibility period.** "Eligibility period" of an individual means the period consisting of the weeks in the individual's benefit year which begin in an extended benefit period and, if the benefit year ends within such extended benefit period, any weeks thereafter which begin in such period.

(9) **Exhaustee.** "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(a) Has received, prior to such week, all of the regular benefits that were available under this law or any other state law (including dependents' allowances and benefits payable to federal civilian employees and ex-servicemen under United States Code, title 5, chapter 85) in the individual's current benefit year that includes such week;

Provided, that, for the purposes of this paragraph, an individual shall be considered to have received all of the regular benefits that were available to the individual although as a result of a pending appeal with respect to wage credits that were not considered in the original monetary determination in the individual's benefit year, the individual may subsequently be determined to be entitled to added regular benefits; or

(b) The individual's benefit year having expired prior to such week, has no, or insufficient, wages and/or employment on the basis of which the individual could establish a new benefit year that would include such week or having established a benefit year that includes such week, the individual is precluded from receiving regular compensation by reason of: (i) a state law provision which meets the requirements of section 3304 (a) (7) of the Internal Revenue Code of 1954, or (ii) a disqualification determination which canceled wage credits or totally reduced benefit rights, or (iii) benefits are not payable by reason of a seasonal limitation in a state reemployment insurance benefits law; and

(c) Has no right to reemployment insurance benefits or allowances, as the case may be, under the Railroad Unemployment Insurance Act, the Trade Expansion Act of 1962, the Automotive Products Act of 1965 and such other federal laws as are specified in regulations issued by the United States Secretary of Labor; and has not received and is not seeking reemployment insurance benefits under the unemployment compensation law of Canada; but if the individual is seeking such benefits and the appropriate agency finally determines that the individual is not entitled to benefits under such law the individual is considered an exhaustee.

(10) **State law.** "State law" means the reemployment insurance benefits law of any state, approved by the United States Secretary of Labor under section 3304 of the Internal Revenue Code of 1954.

Subd. 2. Effect of state law provisions relating to regular benefits on claims for, and the payment of, extended benefits. Except when the result would be inconsistent with the other provisions of this section, as provided in the rules of the commissioner, the provisions of this chapter which apply to claims for, or the payment of, regular benefits shall apply to claims for, and the payment of, extended benefits.

Subd. 3. Eligibility requirements for extended benefits. A claimant shall be eligible to receive extended benefits with respect to any week in the claimant's eligibility period only if with respect to that week the claimant:

(1) is an "exhaustee" as defined in subdivision 1, paragraph (9);

(2) has satisfied the requirements of this law for the receipt of regular benefits that are applicable to claimants claiming extended benefits, including not being subject to a disqualification for the receipt of benefits; and

(3) has, during the claimant's base period earned wage credits available for benefit purposes of not less than 40 times the claimant's weekly benefit amount as determined pursuant to section 268.07, subdivision 2.

Subd. 4. Weekly extended benefit amount. The weekly extended benefit amount payable to an individual for a week of total unemployment in the individual's eligibility period shall be an amount equal to the weekly benefit amount payable during the individual's applicable benefit year.

Subd. 5. Total extended benefit amount. The total extended benefit amount payable to any eligible individual with respect to the individual's applicable benefit year shall be 50 percent of the total amount of regular benefits which were payable under this law in the applicable benefit year, provided that at the expiration of the benefit year, the individual's remaining

balance of extended benefits shall be reduced, but not below zero, by the product arrived at by multiplying the individual's weekly extended benefit amount by the number of weeks in the individual's expired benefit year for which any trade readjustment allowance was paid pursuant to sections 231 to 234 of the Trade Act of 1974, as amended.

Subd. 6. Beginning and termination of extended benefit period. (a) Whenever an extended benefit period is to become effective in this state as a result of a state "on" indicator, or an extended benefit period is to be terminated in this state as a result of a state "off" indicator the commissioner shall make an appropriate public announcement.

(b) Computations required by the provisions of subdivision 1, paragraph (4), shall be made by the commissioner, in accordance with regulations prescribed by the United States Secretary of Labor.

Subd. 7. Effect of federal law. If the Federal-State Extended Unemployment Compensation Act of 1970 is amended so as to authorize this state to pay benefits for an extended benefit period in a manner other than that currently provided by this section, then, and in such case, all the terms and conditions contained in the amended provisions of such federal law shall become a part of this section to the extent necessary to authorize the payment of benefits to eligible individuals as permitted under such amended provision, provided that the federal share continues to be at least 50 percent of the extended benefits paid to individuals under the extended benefit program. The commissioner shall also pay benefits at the earliest possible date in the manner allowed by the Federal-State Unemployment Compensation Act of 1970, as amended through January 1, 1975, the provisions of which shall become a part of this section to the extent necessary to authorize the payment of benefits to eligible individuals.

Subd. 8. Interstate claims. An individual shall not be eligible for extended benefits for any week if:

(a) Extended benefits are payable for that week pursuant to an interstate claim filed in any state under the interstate benefit payment plan; and

(b) No extended benefit period is in effect for the week in that state. This subdivision shall not apply to the first two weeks for which extended benefits are payable pursuant to an interstate claim filed under the interstate benefit payment plan to the individual from the extended benefit account established for the individual with respect to the benefit year.

Subd. 9. Eligibility requirements. Notwithstanding the provisions of subdivision 2, a claimant shall be ineligible for the payment of extended benefits for any week in the claimant's eligibility period if during that week the claimant failed to accept any offer of suitable employment, failed to apply for any suitable employment to which referred by the commissioner or failed to actively seek employment.

Any claimant who has been found ineligible for extended benefits for any week by reason of this subdivision shall also be denied benefits until the claimant has been employed in each of four subsequent weeks, whether or not consecutive, and has earned remuneration of not less than four times the claimant's extended weekly benefit amount.

For the purpose of this subdivision "suitable employment" means any employment which is within the claimant's capabilities and which has a gross average weekly remuneration payable which exceeds the sum of the claimant's weekly benefit amount as determined under subdivision 4 plus the amount, if any, of supplemental reemployment insurance benefits, as defined in section 501(c) (17) (D) of the Internal Revenue Code of 1954, as amended, payable to the claimant for that week. The employment must pay wages not less than the higher of the federal minimum wage without regard to any exemption, or the applicable state minimum wage.

No claimant shall be denied extended benefits for failure to accept an offer of or apply for any suitable employment if:

(a) the position was not offered to the claimant in writing or was not listed with employment service;

(b) the failure could not result in a denial of benefits under the definition of suitable employment for regular benefit claimants in section 268.095 to the extent that the criteria of suitability is not inconsistent with this subdivision; or

(c) the claimant furnishes satisfactory evidence to the commissioner that prospects for obtaining employment in the claimant's customary occupation within a reasonably short period are good.

If the evidence furnished is found to be satisfactory for this purpose, the determination of whether any employment is suitable for the claimant shall be made in accordance with the definition of suitable employment in section 268.095, subdivision 9, paragraph (a), without regard to the definition or special disqualification specified in this subdivision.

No employment shall be found to be suitable employment for a claimant which would not be suitable employment under section 268.095, subdivision 9, paragraph (b).

For the purpose of this subdivision a claimant is "actively seeking employment" during any week if the claimant has engaged in a systematic and sustained effort to obtain employment during the week, and the claimant furnishes tangible evidence of engaging in that effort during the week.

The employment service shall refer any claimant entitled to extended benefits under this section to any employment which is suitable employment for that claimant under this subdivision.

History: 1971 c 61 s 1; 1974 c 355 s 58; 1975 c 1 s 1; 1975 c 336 s 12; 1977 c 297 s 13,14; 1Sp1982 c 1 s 16-21; 1983 c 372 s 19; 1985 c 248 s 70; 1986 c 444; 1987 c 362 s 16; 1992 c 484 s 9; 1993 c 13 art 1 s 33; 1997 c 66 s 33-35,79,80; 1998 c 265 s 44,45.

268.12 Subdivision 1. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

Subd. 1a. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

Subd. 2. [Repealed, 1997 c 66 s 81]

Subd. 3. [Repealed, 1983 c 268 s 2]

Subd. 4. [Repealed, 1997 c 66 s 81]

Subd. 5. [Repealed, 1997 c 66 s 81]

Subd. 6. [Repealed, 1989 c 343 s 7]

Subd. 7. [Repealed, 1997 c 66 s 81]

Subd. 8. [Renumbered 268.186]

Subd. 9. [Repealed, 1995 c 54 s 29]

Subd. 9a. [Renumbered 268.188]

Subd. 10. [Repealed, 1995 c 54 s 29]

Subd. 11. [Repealed, 1997 c 66 s 81]

Subd. 12. [Renumbered 268.19]

Subd. 13. [Repealed, 1995 c 54 s 29]

Subd. 14. [Repealed, 1949 c 605 s 15]

268.121 [Renumbered 268.044]

268.125 ADDITIONAL REEMPLOYMENT INSURANCE BENEFITS.

Subdivision 1. **Additional benefits; when available.** Additional reemployment insurance benefits are authorized if:

(1) at a facility that had 100 or more employees for at least six months during the prior 12 months, the employer reduced operations, resulting within a one-month period in the layoff of 50 percent or more of the facility's work force amounting to 50 or more employees, including reductions caused as a result of a major natural disaster declared by the president;

(2) the employer has no expressed plan to resume operations that would lead to the reemployment of those employees at any time in the immediate future; and

(3) the seasonally adjusted unemployment rate in the county that the facility is located was ten percent or more during the month of the reduction or any of the three months before or after the month of the reduction.

Subd. 2. **Payment of benefits.** Additional benefits are payable from the fund.

Subd. 3. **Eligibility conditions.** A claimant is eligible to receive additional benefits for any week during the claimant's benefit year if:

(1) the claimant was laid off from employment as a result of a reduction under subdivision 1 or was laid off due to lack of work from that employer during the three-month period before, or the three-month period after, the month of the reduction under subdivision 1;

(2) the claimant meets the eligibility requirements under section 268.085;

(3) the claimant is not subject to a disqualification under section 268.095; for the purpose of this subdivision, the disqualifying conditions in section 268.095, and the requalifying requirements, apply to the receipt of additional benefits;

(4) the claimant has exhausted regular benefits under section 268.07, is not entitled to receive extended benefits under section 268.115, and is not entitled to receive benefits under any other state or federal law for that week;

(5) a majority of the claimant's wage credits were from the employer that had a reduction in operations under subdivision 1.

Subd. 4. **Weekly benefit amount.** A claimant's weekly benefit amount shall be the same as the claimant's weekly benefit amount during the current benefit year under section 268.07.

Subd. 5. **Maximum benefits payable.** The maximum amount of additional benefits payable in the claimant's benefit year shall be 13 times the claimant's weekly benefit amount. Benefits paid to a claimant under any state or federal law other than regular benefits under section 268.07 shall be deducted from the maximum amount of additional benefits.

History: 1987 c 362 s 17; 1994 c 488 s 8; 1994 c 503 s 1-3; 1996 c 417 s 13-15; 1997 c 66 s 79; 2Sp1997 c 2 s 18,19; 1998 c 265 s 32

268.13 Subdivision 1. (a) [Renumbered 268.042 subd 4]

(b) [Renumbered 268.131 subd 1 paragraph (a)]

(c) [Renumbered 268.131 subd 1 paragraph (b)]

Subd. 2. [Renumbered 268.194 subd 3a]

Subd. 3. [Repealed, 1998 c 265 s 46]

Subd. 4. [Renumbered 268.131 subd 2]

Subd. 5. [Repealed, 1998 c 265 s 46]

268.131 RECIPROCAL BENEFIT ARRANGEMENTS.

Subdivision 1. (a) The commissioner shall participate in reciprocal arrangements with other states and the federal government, or both, for the payment of benefits on the basis of combining a claimant's wages and employment covered under this law with wages and employment covered under the reemployment insurance laws of other states or the federal government that include provisions for applying the base period of a single state law to an account involving the combining of a claimant's wages and employment and avoiding the duplicate use of wages by reason of such combining. No reciprocal arrangement shall be entered into unless it contains provisions for reimbursements to the fund, by the other state or the federal government, for benefits paid from the fund to claimants based upon wages and employment covered under the laws of the other state or the federal government.

(b) On any reciprocal arrangement, the wages paid a claimant from employment covered under a reemployment insurance law of another state or of the federal government, shall be considered wages from covered employment for the purpose of determining the claimant's rights to benefits under sections 268.03 to 268.23.

Subd. 2. **Cooperation with foreign governments.** The commissioner is authorized to enter into or cooperate in arrangements whereby facilities and services provided under sections 268.03 to 268.23 and facilities and services provided under the reemployment insurance law of any foreign government, may be used for the taking of applications for benefits and continued claims and the payment of benefits under this law or under a similar law of a foreign government.

History: (4337-31) Ex1936 c 2 s 11; 1937 c 306 s 8; 1939 c 443 s 9; 1941 c 554 s 10; 1943 c 650 s 8; 1945 c 376 s 10; 1947 c 432 s 8-10; 1965 c 45 s 45; 1969 c 9 s 64; 1971 c 942 s 13; 1979 c 181 s 16; 1986 c 444; 1989 c 209 art 2 s 1; 1996 c 417 s 31; 1997 c 66 s 79; 1998 c 265 s 33-35,45

268.135 SHARED WORK PLAN.

Subdivision 1. **Shared work plan; definitions.** For purposes of this section, the following terms have the meanings given:

(a) "Affected employee" means an individual who was continuously employed as a member of the affected group, by the shared work employer, for at least six months prior to application, on a full-time basis.

(b) "Affected group" means five or more employees designated by the employer to participate in a shared work plan.

(c) "Shared work employer" means an employer with a shared work plan in effect.

(d) "Shared work plan" or "plan" means an employer's voluntary, written plan for reducing unemployment, under which a specified group of employees shares the work remaining after their normal weekly hours of work are reduced.

(e) "Approved shared work plan" or "approved plan" means an employer's shared work plan which meets the requirement of this section.

(f) "Normal weekly hours of work" means the number of hours in a week that the employee normally would work for the shared work employer or 40 hours, whichever is less.

Subd. 2. **Participation.** (a) An employer wishing to participate in the shared work unemployment benefit program shall submit a signed, written shared work plan to the commissioner for approval. The commissioner may give written approval of a shared work plan only if it:

(1) specifies the employees in the affected group;

(2) applies to only one affected group;

(3) includes a certified statement by the employer that each individual specified in the affected group is an affected employee;

(4) includes a certified statement by the employer that for the duration of the plan the reduction in normal weekly hours of work of the employees in the affected group is instead of layoffs which otherwise would result in at least at large a reduction in the total normal weekly hours of work;

(5) specifies an expiration date which is no more than one year from the date the employer submits the plan for approval;

(6) specifies that fringe benefits, such as health and retirement, available to the employees in the affected group are not reduced beyond the percentage of reduction in hours of work; and

(7) is approved in writing by the collective bargaining agent for each collective bargaining agreement which covers any employee in the affected group.

(b) The commissioner shall establish the beginning and ending dates of an approved shared work plan.

(c) The commissioner shall approve or disapprove the plan within 15 days of its receipt. The commissioner shall notify the employer of the reasons for disapproval of a shared work plan within ten days of the determination. Determinations of the commissioner are final.

(d) Disapproval of a plan may be reconsidered upon application of the employer or at the discretion of the commissioner. Approval of a shared work plan may be revoked by the commissioner when it is established that the approval was based, in whole or in part, upon information in the plan which is either false or substantially misleading.

Subd. 3. **Eligibility.** (a) Notwithstanding any other provision of this chapter, an individual is unemployed and eligible to receive shared work benefits with respect to any week if the commissioner finds that:

(1) during the week the individual is employed as a member of an affected group in an approved plan which was approved prior to the week and is in effect for the week; and

(2) during the week the individual's normal weekly hours of work were reduced, in accordance with an approved plan, at least 20 percent but not more than 40 percent, with a corresponding reduction in wages.

(b) Shared work benefits shall not be paid to an eligible individual beyond one benefit year under an approved plan or modification of an approved plan.

(c) The total amount of regular benefits and shared work benefits paid to an individual in a benefit year shall not exceed the maximum benefit amount established.

(d) An otherwise eligible individual shall not be denied benefits under this section because of the application of any provision of this chapter relating to availability for work, active search for work, or refusal to apply for or accept work from other than the individual's shared work employer.

Subd. 4. Weekly benefit amount. (a) An individual who is eligible for shared work benefits under this section shall be paid, with respect to any week of unemployment, a weekly shared work reemployment insurance benefits amount. The amount shall be equal to the individual's regular weekly benefit amount multiplied by the nearest full percentage of reduction of the individual's regular weekly hours of work as set forth in the employer's plan. The benefit payment, if not a multiple of \$1 shall be rounded to the next lower dollar.

(b) The provisions of section 268.085, subdivision 5, shall not apply to earnings from the shared work employer of an individual eligible for payments under this section unless the resulting payment would be less than the regular benefit payment for which the individual would otherwise be eligible without regard to shared work reemployment insurance benefits.

(c) An individual shall not be eligible for benefits payable under this section for any week in which paid work is performed for the shared work employer in excess of the reduced hours set forth in the approved plan.

History: 1994 c 503 s 4; 1996 c 417 s 16; 1997 c 66 s 79,80; 1998 c 265 s 45

268.14 Subdivision 1. [Renumbered 268.198, subd 1]

Subd. 2. [Renumbered 268.198, subd 2]

Subd. 3. [Repealed, 1997 c 66 s 81]

Subd. 4. [Repealed, 1997 c 66 s 81]

Subd. 5. [Renumbered 268.198, subd 3]

Subd. 6. MS 1980 [Expired]

Subd. 6. [Expired]

268.145 INCOME TAX WITHHOLDING.

Subdivision 1. **Notification.** (a) Upon application for a reemployment insurance account, the claimant shall be informed that:

- (1) reemployment insurance benefits are subject to federal and state income tax;
- (2) there are requirements for filing estimated tax payments;
- (3) the claimant may elect to have federal income tax withheld from benefits;
- (4) if the claimant elects to have federal income tax withheld, the claimant may, in addition, elect to have Minnesota state income tax withheld; and
- (5) at any time during the benefit year the claimant may change a prior election.

(b) If a claimant elects to have federal income tax withheld, the commissioner shall deduct that percentage required by the Internal Revenue Code. If a claimant, in addition to federal income tax withholding, elects to have Minnesota state income tax withheld, the commissioner shall make an additional five percent deduction for Minnesota state income tax. Any amounts deducted pursuant to sections 268.155, 268.18, 268.182, and 268.184 have priority over any amounts deducted under this section. Federal income tax withholding has priority over Minnesota state income tax withholding.

(c) An election to have federal income tax, or federal and Minnesota state income tax, withheld shall not be retroactive and shall only apply to benefits paid after the election.

Subd. 2. Transfer of funds. The amount of any benefits deducted under this section shall remain in the Minnesota reemployment insurance fund until transferred to the federal Internal Revenue Service, or the Minnesota department of revenue, as an income tax payment on behalf of the claimant.

Subd. 3. Correction of errors. Any error which resulted in underwithholding under this section shall not be corrected retroactively.

Subd. 4. **Federal requirement.** The commissioner shall follow all federal requirements for the deduction and withholding of federal and Minnesota state income tax from re-employment insurance benefits.

Subd. 5. **Application.** This section applies to any payments under federal or state law as compensation, assistance, or allowance with respect to unemployment.

History: 1996 c 417 s 17; 1997 c 66 s 79; 1998 c 254 art 1 s 73

268.15 Subdivision 1. [Renumbered 268.196, subd 1]

Subd. 2. [Renumbered 268.196, subd 2]

Subd. 3. [Renumbered 268.196, subd 3]

Subd. 4. [Repealed, 2Sp1981 c 1 s 8]

268.155 CHILD SUPPORT INTERCEPT OF REEMPLOYMENT INSURANCE BENEFITS.

Subdivision 1. **Definitions.** As used in this section unless the context clearly requires otherwise:

(a) "Reemployment insurance" means any compensation payable under this chapter including amounts payable by the commissioner pursuant to an agreement under any federal law providing for compensation, assistance, or allowance with respect to unemployment;

(b) "Child support obligations" means obligations which are being enforced by the public agency responsible for child support enforcement pursuant to a plan described in section 454 of the Social Security Act which has been approved by the secretary of health and human services under part D of title IV of the Social Security Act;

(c) "Child support agency" means the public agency responsible for child support enforcement pursuant to a plan described in section 454 of the Social Security Act.

Subd. 2. **Notice of claim.** Upon application for a reemployment insurance account, the claimant shall disclose whether or not the claimant owes child support obligations. If the claimant discloses that the claimant owes child support obligations, and establishes a reemployment insurance account, the commissioner shall notify the child support agency that the claimant has established a reemployment insurance account.

Subd. 3. **Withholding of benefits.** The commissioner shall deduct and withhold from any reemployment insurance payable to a claimant that owes child support obligations:

(a) The amount specified by the claimant to the commissioner to be deducted and withheld under this section, if neither clause (b) or (c) is applicable; or

(b) The amount determined pursuant to an agreement submitted to the commissioner under section 454 (20) (B) (i) of the Social Security Act by the child support agency, unless (c) is applicable; or

(c) Any amount otherwise required to be so deducted and withheld from the unemployment compensation pursuant to "legal process" as defined in section 462(e) of the Social Security Act, properly served upon the commissioner.

Subd. 4. **Payment by the commissioner.** Any amount deducted and withheld under subdivision 3 shall be paid by the commissioner to the public agency responsible for child support enforcement.

Subd. 5. **Effect of payments.** Any amount deducted and withheld under subdivision 3 shall for all purposes be treated as if it were paid to the claimant as reemployment insurance and paid by the claimant to the public agency responsible for child support enforcement in satisfaction of the claimant's child support obligations.

Subd. 6. **Reimbursement of costs.** Appropriate arrangements shall be made for reimbursement by the child support agency for the administrative costs incurred by the commissioner under this subdivision and sections 518.551 and 518.6111 which are attributable to child support obligations being enforced by the public agency responsible for child support enforcement.

History: 1Sp1982 c 1 s 22; 1986 c 444; 1987 c 384 art 2 s 67; 1994 c 488 s 8; 1996 c 417 s 10-12; 1997 c 66 s 79,80; 1997 c 203 art 6 s 92

268.16 Subdivision 1. [Renumbered 268.057 subd 5]

Subd. 1a. [Renumbered 268.057 subd 6]

- Subd. 2. [Renumbered 268.057 subd 1]
- Subd. 3. [Repealed, 1Sp1982 c 1 s 43]
- Subd. 3a. [Renumbered 268.057 subd 4]
- Subd. 4. [Renumbered 268.067]
- Subd. 5. [Renumbered 268.057 subd 10]
- Subd. 6. [Renumbered 268.057 subd 7]
- Subd. 7. [Renumbered 268.057 subd 8]
- Subd. 8. [Repealed, 1997 c 66 s 81]
- Subd. 9. [Renumbered 268.057 subd 9]

268.161 Subdivision 1. [Renumbered 268.058, subd 1]

- Subd. 1a. [Renumbered 268.058, subd 2]
- Subd. 2. [Renumbered 268.058 subd 6]
- Subd. 3. [Repealed, 1997 c 66 s 81]
- Subd. 4. [Renumbered 268.058, subd 5]
- Subd. 5. [Renumbered 268.058, subd 4]
- Subd. 6. [Renumbered 268.507, subd 2]
- Subd. 7. [Renumbered 268.057, subd 3]
- Subd. 8. [Renumbered 268.058, subd 3]
- Subd. 9. [Renumbered 268.063]

268.162 [Renumbered 268.064]

268.163 [Renumbered 268.065]

268.164 [Renumbered 268.0625]

268.165 [Repealed, 1997 c 66 s 81]

268.166 [Renumbered 268.066]

268.167 [Renumbered 268.059]

268.17 [Renumbered 268.192]

268.18 BENEFIT OVERPAYMENTS.

Subdivision 1. **Erroneous payments.** (a) Any claimant who, by reason of the claimant's own mistake or through the error of any individual engaged in the administration of this chapter or because of a determination, redetermination, or amended determination issued pursuant to section 268.07 or 268.101, has received any benefits that the claimant was not entitled to, shall promptly repay the benefits to the department. If the claimant fails to repay the benefits, the commissioner shall, as soon as the erroneous payment is discovered, determine the amount due and notify the claimant in writing to repay the benefits.

(b) Unless the claimant files an appeal within 30 calendar days after the mailing of the determination of overpayment to the claimant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105. A claimant may not collaterally attack, by way of an appeal to an overpayment determination, any prior determination issued pursuant to section 268.07 or 268.101, or decision issued pursuant to section 268.105, that has become final.

(c) If the claimant fails to repay the benefits, the commissioner may deduct from any future benefits payable to the claimant in the current or any subsequent benefit year the amount of the overpayment, except that no single deduction under this subdivision shall exceed 50 percent of the amount of the payment from which the deduction is made, or the overpayment may be collected the same as delinquent taxes. A determination of overpayment shall state the methods of collection the commissioner may use to recover the overpayment.

(d) If a claimant has been overpaid benefits under the law of another state because of an error and that state certifies to the commissioner that the claimant is liable under its law to

repay the benefits and requests the commissioner to recover the overpayment, the commissioner may deduct from future benefits payable to the claimant in the current or any subsequent benefit year the amount of overpayment, except that no single deduction under this subdivision shall exceed 50 percent of the amount of the payment from which the deduction is made.

(e) Benefits paid for weeks more than three years prior to the discovery of error are not erroneous payments.

Subd. 2. **Fraud.** (a) Any claimant who receives benefits by knowingly and willfully misrepresenting, misstating, or failing to disclose any material fact that would have made the claimant not entitled to those benefits has committed fraud. After the discovery of facts indicating fraud, the commissioner shall make a written determination that the claimant was not entitled to benefits that were obtained by fraud and that the claimant must promptly repay the benefits to the department. In addition, the commissioner shall assess a penalty equal to 25 percent of the amount fraudulently obtained. If the claimant had a prior overpayment due to fraud, the commissioner shall, on the present overpayment, assess a penalty equal to 50 percent of the amount fraudulently obtained.

(b) Unless the claimant files an appeal within 30 calendar days after the mailing of the determination of overpayment by fraud to the claimant's last known address, the determination shall become final. Proceedings on the appeal shall be conducted in accordance with section 268.105.

(c) If the claimant fails to repay the benefits, penalty, and any interest assessed under subdivision 2b, the commissioner shall deduct from future benefits payable to the claimant in the current or any subsequent benefit year the amount of overpayment or the total due may be collected the same as delinquent taxes. A determination of overpayment by fraud shall state the methods of collection the commissioner may use to recover the overpayment. Money received in repayment of fraudulently obtained benefits, penalties, and interest shall first be applied to the benefits overpaid, then to the penalty amount due, then to any interest due. Payments made toward penalty and interest shall be credited to the contingent account.

(d) If a claimant has been overpaid benefits under the law of another state because of fraud and that state certifies to the commissioner that the claimant is liable to repay the benefits and requests the commissioner to recover the overpayment, the commissioner may deduct from future benefits payable to the claimant in the current or any subsequent benefit year the amount of overpayment.

(e) A determination of overpayment by fraud may be made at any time.

Subd. 2a. [Renumbered subd 3a]

Subd. 2b. **Interest.** (a) On any benefits fraudulently obtained, as determined under subdivision 2, the commissioner shall have the discretion to assess interest at the rate of 1-1/2 percent per month on any overpaid amount that remains unpaid 30 calendar days after the date of the determination of overpayment by fraud. A determination of overpayment by fraud shall state that interest may be assessed.

(b) If this subdivision became effective after the date of the determination of overpayment by fraud, or the determination did not state that interest may be assessed, interest pursuant to this subdivision may be assessed beginning 30 calendar days after written notification to the claimant.

Subd. 3. [Renumbered 268.182]

Subd. 3a. **Offset of federal benefits.** The commissioner is authorized to enter into reciprocal agreements with the United States Secretary of Labor, whereby, overpayments of benefits as determined under federal law, with respect to benefits under a federal program administered by Minnesota, may be recovered by offset from benefits otherwise payable under this chapter or any federal program. As provided by reciprocal agreement, benefit overpayments under subdivisions 1 and 2 may be recovered by offset from benefits otherwise payable under a federal program.

Subd. 4. **Cancellation of benefits paid through error or fraud.** (a) If benefits paid through error are not repaid or deducted from subsequent benefits as provided for in subdivision 1 within six years after the date of the determination of overpayment, the commissioner

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shall cancel the overpayment balance, and no administrative or legal proceedings shall be used to enforce collection of those amounts.

(b) If benefits paid as a result of fraud including penalties and interest are not repaid or deducted from subsequent benefits as provided for in subdivision 2 within ten years after the date of the determination of overpayment by fraud, the commissioner shall cancel the overpayment balance and any penalties and interest due, and no administrative or legal proceeding shall be used to enforce collection of those amounts.

(c) The commissioner may cancel at any time benefits paid through error or fraud including penalties and interest that the commissioner determines are uncollectible due to death or bankruptcy.

Subd. 4a. **Court fees.** (a) If the commissioner is required to pay any court fees in an attempt to enforce collection of overpaid benefits, penalties, or interest, the commissioner may add the amount of the court fees to the total amount due.

(b) If a claimant who has been determined overpaid benefits because of fraud seeks to have any portion of the debt discharged under the federal bankruptcy code, and the commissioner files an objection in bankruptcy court to the discharge, the commissioner may add the commissioner's cost of any court fees to the debt if the bankruptcy court does not discharge the debt.

Subd. 5. [Repealed, 1997 c 66 s 81]

Subd. 6. [Renumbered 268.184]

History: (4337-36) *Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40; 1983 c 216 art 1 s 42,87; 1983 c 372 s 45,46; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 385 s 40-45; 1988 c 712 s 3; 1989 c 209 art 2 s 1; 1990 c 566 s 8; 1992 c 484 s 15; 1994 c 483 s 1; 1995 c 54 s 21-24; 1996 c 417 s 29,31; 1997 c 66 s 71-73,79; 1998 c 265 s 36,45*

NOTE: The amendment to subdivision 2, paragraph (a), by Laws 1998, chapter 265, section 36, is effective for determinations issued on or after July 1, 1999. Laws 1998, chapter 265, section 47.

268.182 FALSE REPRESENTATIONS; CONCEALMENT OF FACTS; PENALTY.

(a) Whoever obtains, or attempts to obtain, or aids or abets any individual to obtain by means of an intentional false statement or representation, by intentional concealment of a material fact, or by impersonation or other fraudulent means, benefits that the individual is not entitled or benefits greater than the individual is entitled under this chapter, or under the law of any state or of the federal government, either personally or for any other individual, is guilty of theft and shall be sentenced pursuant to section 609.52.

(b) Any individual who violates paragraph (a) may be assessed an administrative penalty of denial of benefits for one to 52 weeks that the individual would otherwise be entitled to benefits. A denial shall not apply to any week more than two years after the week that the violation of paragraph (a) was determined. A written determination of denial shall be mailed to the individual's last known address. Unless an appeal is filed within 30 calendar days of mailing, the determination shall be final. Proceeding on the appeal shall be conducted in accordance with section 268.105. This paragraph shall not apply if prosecution is commenced under paragraph (a) or a penalty is imposed under section 268.18, subdivision 2.

(c) Any employer or any officer or agent of an employer or any other person who makes a false statement or representation knowing it to be false, or who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any claimant, is guilty of a gross misdemeanor unless the benefit underpayment exceeds \$500, in that case the person is guilty of a felony.

History: *Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40; 1983 c 216 art 1 s 42,87; 1983 c 372 s 45,46; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 385 s 40-45; 1988 c 712 s 3; 1989 c 209 art 2 s 1; 1990 c 566 s 8; 1992 c 484 s 15; 1994 c 483 s 1; 1995 c 54 s 21-24; 1996 c 417 s 29,31; 1997 c 66 s 74,79; 1998 c 265 s 37*

268.184 EMPLOYER MISCONDUCT; PENALTY.

(a) If the commissioner finds that any employer or any employee, officer, or agent of any employer, is in collusion with any claimant for the purpose of assisting the claimant to receive benefits illegally, the employer shall be penalized \$500 or the amount of benefits determined to be overpaid, whichever is greater.

(b) If the commissioner finds that any employer or any employee, officer, or agent of an employer has made (1) a false statement or representation knowing it to be false, or (2) has made a false statement or representation without a good faith belief as to correctness of the statement or representation, or (3) who knowingly fails to disclose a material fact, to prevent or reduce the payment of benefits to any claimant or to reduce or prevent a charge of benefits to its account, the employer shall be penalized \$500.

(c) Penalties under this section shall be in addition to any other penalties and subject to the same collection procedures that apply to past due taxes. Penalties shall be paid to the department within 30 calendar days of assessment and credited to the contingent account.

(d) The assessment of the penalty shall be final unless the employer files an appeal within 30 calendar days after the sending of notice of the penalty to the employer by mail or electronic transmission. Proceedings on the appeal shall be conducted in accordance with section 268.105.

History: *Ex1936 c 2 s 16; 1941 c 554 s 15; 1951 c 442 s 11; 1953 c 97 s 18; 1969 c 567 s 3; 1973 c 254 s 3; 1975 c 336 s 24; 1977 c 4 s 10; 1977 c 430 s 25 subd 1; 1979 c 181 s 17,18; 1Sp1982 c 1 s 37-40; 1983 c 216 art 1 s 42,87; 1983 c 372 s 45,46; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 385 s 40-45; 1988 c 712 s 3; 1989 c 209 art 2 s 1; 1990 c 566 s 8; 1992 c 484 s 15; 1994 c 483 s 1; 1995 c 54 s 21-24; 1996 c 417 s 29,31; 1997 c 66 s 76,79; 1998 c 265 s 38*

268.186 RECORDS.

(a) Each employer shall keep true and accurate records for the periods of time and containing the information the commissioner may require. For the purpose of determining compliance with this chapter, or for the purpose of collection of any amounts due under this chapter, the commissioner or any delegated representative has the power to examine, or cause to be examined or copied, any books, correspondence, papers, records, or memoranda which are relevant to making these determinations, whether the books, correspondence, papers, records, or memoranda are the property of or in the possession of the employer or any other person or corporation at any reasonable time and as often as may be necessary.

(b) The commissioner or any delegated representative may make summaries, compilations, photographs, duplications, or reproductions of any records, or reports that the commissioner considers advisable for the effective and economical preservation of the information contained therein, and any summaries, compilations, photographs, duplications, or reproductions shall be admissible in any proceeding under this chapter, if the original record or records would have been admissible. Notwithstanding any restrictions contained in section 16B.50, the commissioner is hereby authorized to duplicate records, reports, summaries, compilations, instructions, determinations, or any other written matter pertaining to the administration of the Minnesota Economic Security Law.

(c) Notwithstanding any inconsistent provisions elsewhere, the commissioner may provide for the destruction or disposition of any records, reports, or reproductions thereof, or other papers in the commissioner's custody, that are more than two years old, the preservation of which is no longer necessary for determining employer liability or a claimant's benefit rights or for any purpose necessary to the proper administration of this chapter, including any required audit, provided that the commissioner may provide for the destruction or disposition of any record, report, or other paper in the commissioner's custody which has been photographed, duplicated, or reproduced.

History: *Ex1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8,10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1,3; 1969 c 854 s 11,12; 1969 c 1129 art 8 s*

7; 1971 c 942 s 12; 1973 c 254 s 1,3; 1973 c 492 s 14; 1974 c 241 s 1; 1975 c 315 s 19; 1975 c 336 s 20,21; 1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1979 c 181 s 15; 1980 c 615 s 37; 1981 c 311 s 39; 1982 c 424 s 130; 1982 c 545 s 23,24; 1Sp1982 c 1 s 31,32; 1983 c 216 art 1 s 87; 1983 c 247 s 114; 1983 c 260 s 58; 1983 c 312 art 8 s 2; 1983 c 372 s 37,38; 1984 c 544 s 89; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 165 s 1; 1987 c 312 art 1 s 26 subd 2; 1987 c 362 s 23; 1987 c 385 s 25; 1989 c 65 s 11; 1989 c 209 art 2 s 1; 1990 c 516 s 6,7; 1991 c 202 s 16; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 62,79; 1998 c 265 s 44

268.188 SUBPOENAS; OATHS.

(a) In the discharge of the duties imposed by sections 268.03 to 268.23, the commissioner or any delegated representative, shall have power to administer oaths and affirmations, take depositions, certify to official acts, and issue subpoenas to compel the attendance of persons and the production of books, papers, correspondence, memoranda, and other records necessary in connection with the administration of these sections.

(b) Persons, other than claimants or officers and employees of an employer that is the subject of the inquiry, subpoenaed pursuant to this subdivision, shall be allowed fees the same as witness fees in civil actions in district court. The fees need not be paid in advance.

(c) The subpoena shall be enforceable through the district court in the district in which the subpoena is issued.

History: Ex1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8,10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1,3; 1969 c 854 s 11,12; 1969 c 1129 art 8 s 7; 1971 c 942 s 12; 1973 c 254 s 1,3; 1973 c 492 s 14; 1974 c 241 s 1; 1975 c 315 s 19; 1975 c 336 s 20,21; 1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1979 c 181 s 15; 1980 c 615 s 37; 1981 c 311 s 39; 1982 c 424 s 130; 1982 c 545 s 23,24; 1Sp1982 c 1 s 31,32; 1983 c 216 art 1 s 87; 1983 c 247 s 114; 1983 c 260 s 58; 1983 c 312 art 8 s 2; 1983 c 372 s 37,38; 1984 c 544 s 89; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 165 s 1; 1987 c 312 art 1 s 26 subd 2; 1987 c 362 s 23; 1987 c 385 s 25; 1989 c 65 s 11; 1989 c 209 art 2 s 1; 1990 c 516 s 6,7; 1991 c 202 s 16; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 63,79; 1998 c 265 s 44

268.19 INFORMATION.

(a) Except as otherwise provided by this section, data gathered from any employer or individual pursuant to the administration of sections 268.03 to 268.23 are private data on individuals or nonpublic data not on individuals as defined in section 13.02, subdivisions 9 and 12, and may not be disclosed except pursuant to a court order or section 13.05. These data may be disseminated to and used by the following agencies without the consent of the subject of the data:

(1) state and federal agencies specifically authorized access to the data by state or federal law;

(2) any agency of Minnesota or any other state; or any federal agency charged with the administration of an employment security law or the maintenance of a system of public employment offices;

(3) human rights agencies within Minnesota that have enforcement powers;

(4) the department of revenue must have access to department private data on individuals and nonpublic data not on individuals only to the extent necessary for enforcement of Minnesota tax laws;

(5) public and private agencies responsible for administering publicly financed assistance programs for the purpose of monitoring the eligibility of the program's recipients;

(6) the department of labor and industry on an interchangeable basis with the department subject to the following limitations and notwithstanding any law to the contrary:

(i) the department must have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under sections 268.03 to 268.23; and

(ii) the department of labor and industry must have access to private data on individuals and nonpublic data not on individuals for uses consistent with the administration of its duties under Minnesota law;

(7) the department of trade and economic development may have access to private data on individual employers and nonpublic data not on individual employers for its internal use only; when received by the department of trade and economic development, the data remain private data on individuals or nonpublic data;

(8) local and state welfare agencies for monitoring the eligibility of the data subject for assistance programs, or for any employment or training program administered by those agencies, whether alone, in combination with another welfare agency, or in conjunction with the department or to monitor and evaluate the statewide Minnesota family investment program by providing data on recipients and former recipients of food stamps, cash assistance under chapter 256, 256D, 256J, or 256K, child care assistance under chapter 119B, or medical programs under chapter 256B, 256D, or 256L;

(9) local, state, and federal law enforcement agencies for the sole purpose of ascertaining the last known address and employment location of the data subject, provided the data subject is the subject of a criminal investigation; and

(10) the department of health may have access to private data on individuals and nonpublic data not on individuals solely for the purposes of epidemiologic investigations.

(b) Data on individuals and employers that are collected, maintained, or used by the department in an investigation pursuant to section 268.182 are confidential as to data on individuals and protected nonpublic data not on individuals as defined in section 13.02, subdivisions 3 and 13, and must not be disclosed except pursuant to statute or court order or to a party named in a criminal proceeding, administrative or judicial, for preparation of a defense.

(c) Tape recordings and transcripts of recordings of proceedings conducted in accordance with section 268.105 and exhibits received into evidence at those proceedings are private data on individuals and nonpublic data not on individuals and must be disclosed only pursuant to the administration of section 268.105, or pursuant to a court order.

(d) The department may disseminate an employer's name, address, industry code, occupations employed, and the number of employees by ranges of not less than 100 for the purpose of assisting individuals using the Minnesota workforce center system in obtaining employment.

(e) The general aptitude test battery and the nonverbal aptitude test battery as administered by the department are private data on individuals or nonpublic data.

(f) Data gathered by the department pursuant to the administration of sections 268.03 to 268.23 must not be made the subject or the basis for any suit in any civil proceedings, administrative or judicial, unless the action is initiated by the department.

History: *Ex*1936 c 2 s 10; 1937 c 306 s 7; 1939 c 441 s 42; 1939 c 443 s 8,10; 1941 c 554 s 9; 1943 c 650 s 7; 1945 c 376 s 9; 1947 c 600 s 3-6; 1949 c 605 s 15; 1949 c 739 s 8; 1951 c 442 s 6-10; 1951 c 713 s 29; 1953 c 97 s 15; 1953 c 603 s 1; 1953 c 612 s 1; 1955 c 847 s 22; 1957 c 883 s 7; 1965 c 45 s 42-44; 1965 c 741 s 18; 1967 c 770 s 1; 1969 c 9 s 63; 1969 c 310 s 2; 1969 c 567 s 1,3; 1969 c 854 s 11,12; 1969 c 1129 art 8 s 7; 1971 c 942 s 12; 1973 c 254 s 1,3; 1973 c 492 s 14; 1974 c 241 s 1; 1975 c 315 s 19; 1975 c 336 s 20,21; 1977 c 172 s 2; 1977 c 237 s 1; 1977 c 297 s 20; 1977 c 305 s 31; 1977 c 430 s 25 subd 1; 1978 c 674 s 60; 1979 c 181 s 15; 1980 c 615 s 37; 1981 c 311 s 39; 1982 c 424 s 130; 1982 c 545 s 23,24; 1Sp1982 c 1 s 31,32; 1983 c 216 art 1 s 87; 1983 c 247 s 114; 1983 c 260 s 58; 1983 c 312 art 8 s 2; 1983 c 372 s 37,38; 1984 c 544 s 89; 1985 c 248 s 70; 1Sp1985 c 14 art 9 s 75; 1986 c 444; 1987 c 165 s 1; 1987 c 312 art 1 s 26 subd 2; 1987 c 362 s 23; 1987 c 385 s 25; 1989 c 65 s 11; 1989 c 209 art 2 s 1; 1990 c 516 s 6,7; 1991 c 202 s 16; 1993 c 67 s 10; 1994 c 483 s 1; 1994 c 488 s 8; 1995 c 54 s 12; 1996 c 417 s 23,31; 1996 c 440 art 1 s 47; 1997 c 66 s 79; 1998 c 273 s 13; 1998 c 371 s 11.

268.192 PROTECTION OF RIGHTS AND BENEFITS.

Subdivision 1. Waiver of rights void. Any agreement by an individual to waive, release, or commute rights to benefits or any other rights under sections 268.03 to 268.23 shall be void. Any agreement by an employee to pay all or any portion of an employer's taxes, shall be void. No employer shall directly or indirectly make or require or accept any deduction from wages to pay the employer's taxes, require or accept any waiver of any right or in any manner obstruct or impede an application or continued claim for benefits. Any employer or officer or agent of any employer who violates any portion of this subdivision shall, for each offense, be guilty of a misdemeanor.

Subd. 2. No assignment of benefits; exemptions. Any assignment, pledge, or encumbrance of any right to benefits which are or may become due or payable under sections 268.03 to 268.23 shall be void; and such rights to benefits shall be exempt from levy, execution, attachment, or any other remedy provided for the collection of debt; and benefits received by any individual so long as they are not mingled with other funds of the recipient shall be exempt from any remedy for the collection of all debts, except debts incurred for necessities furnished to such individual or a spouse or dependents during the time when such individual was unemployed. Any waiver of any exemption provided for in this subdivision shall be void.

History: *Ex1936 c 2 s 15; 1941 c 554 s 14; 1986 c 444; 1989 c 209 art 2 s 1; 1996 c 417 s 31; 1997 c 66 s 79; 1998 c 265 s 39*

268.194 REEMPLOYMENT INSURANCE FUND.

Subdivision 1. Establishment; how constituted. There is hereby established as a special fund, separate and apart from all public money or funds of this state, a reemployment insurance fund, which shall be administered by the commissioner exclusively for the purpose of sections 268.03 to 268.23. This fund shall consist of:

- (1) All taxes collected under those sections;
- (2) Interest earned upon any money in the fund;
- (3) Any property or securities acquired through the use of money belonging to the fund;
- (4) All earnings of such property or securities;
- (5) Any money received from the Federal Unemployment Account in the unemployment trust fund in accordance with Title XII of the Social Security Act, as amended, and any other money made available to the fund and received pursuant to an agreement, between this state and any agency of the federal government or any other state, for the payment of reemployment insurance benefits;
- (6) All money recovered on losses sustained by the fund;
- (7) All money credited to the account of this state in the unemployment trust fund pursuant to section 903 of the Social Security Act, as amended; and
- (8) All money received for the fund from any other source.

All money in the fund shall be mingled and undivided.

Subd. 2. Commissioner of finance to be custodian; separate accounts. The commissioner of finance shall be the treasurer and custodian of the fund, administer the fund in accordance with the directions of the commissioner, and issue warrants upon it. The commissioner of finance shall maintain within the fund three separate accounts:

- (1) a clearing account;
- (2) an unemployment trust fund account; and
- (3) a benefit account.

All money payable to the fund, upon receipt by the commissioner, shall be forwarded to the commissioner of finance who shall immediately deposit the money in the clearing account. All money in the clearing account, after clearance, shall, except as otherwise provided, be immediately deposited to the credit of the account of Minnesota in the federal unemployment trust fund. Refunds payable pursuant to section 268.057 may be paid from the clearing account or the benefit account. The benefit account shall consist of all money requisitioned from Minnesota's account in the federal unemployment trust fund for the payment

of benefits. Money in the clearing and benefit accounts may be deposited by the commissioner of finance, under the direction of the commissioner, in any depository bank that general funds of Minnesota may be deposited, but no public deposit insurance charge or premium shall be paid out of the fund. Money in the clearing and benefit accounts shall not be commingled with other state funds, but shall be maintained in separate accounts on the books of the depository bank. This money shall be secured by the depository bank to the same extent and in the same manner as required by the general depository law of Minnesota; and collateral pledged for this purpose shall be kept separate and distinct from any collateral pledged to secure other funds of Minnesota. All sums recovered for losses sustained by the fund shall be deposited in the fund.

Subd. 3. Withdrawals. (1) Money requisitioned from Minnesota's account in the federal unemployment trust fund shall be used exclusively for the payment of benefits and for refunds pursuant to section 268.057, except that money credited to Minnesota's account pursuant to United States Code, title 42, section 1103 of the Social Security Act, shall be used exclusively for the payment of expenses of administration. The commissioner shall from time to time requisition from the federal unemployment trust fund the amounts, not exceeding the amount in Minnesota's account, the commissioner considers necessary for the payment of benefits and refunds for a reasonable future period. Upon receipt the commissioner of finance shall deposit the money in the benefit account and issue warrants for the payment of benefits solely from the benefit account. Expenditures of money in the benefit account and refunds from the clearing account shall not be subject to any provisions of law requiring specific appropriations or other formal release by state officers. All warrants issued for the payment of benefits and refunds shall bear the signature of the commissioner of finance and the counter signature of the commissioner.

(2) Any balance of money requisitioned from the unemployment trust fund that remains unclaimed or unpaid in the benefit account after the expiration of the period for which the sums were requisitioned shall either be deducted from estimates for, and may be utilized for the payment of, benefits and refunds during following periods or, in the discretion of the commissioner, shall be redeposited in the federal unemployment trust fund, as provided in subdivision 2.

Subd. 3a. Reimbursements. The commissioner is authorized to make to other state or federal agencies and to receive from other state or federal agencies, reimbursements from or to the fund, in accordance with reciprocal arrangements entered into pursuant to section 268.131.

Subd. 4. Disposal of certain money. Any money made available to the reemployment insurance fund and received pursuant to an agreement between this state and any agency of the federal government or any other state for the payment of reemployment insurance benefits shall be placed directly in the benefit account of the unemployment trust fund.

Subd. 5. Payment of expenses of administration. (1) Money credited to the account of this state in the unemployment trust fund by the secretary of the treasury of the United States of America pursuant to section 903 of the Social Security Act, as amended, may be requisitioned and used for the payment of expenses incurred for the administration of Laws 1957, chapter 883 pursuant to a specific appropriation by the legislature, provided that the expenses are incurred and the money is requisitioned after the enactment of an appropriation law which:

(a) Specifies the purposes for which such money is appropriated and the amounts appropriated therefor.

(b) Limits the period within which such money may be obligated to a period ending not more than two years after the date of the enactment of the appropriation law, and

(c) Limits the amount which may be obligated during any 12-month period beginning on July 1 and ending on the next June 30 to an amount which does not exceed the amount by which (i) the aggregate of the amounts credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, during the same 12-month period and the 34 preceding 12-month periods, exceeds (ii) the aggregate of the amounts used pursuant to this subdivision and charged against the amounts credited to the account of this state during any of such 35 12-month periods. For the purposes of this subdivision, amounts used during any

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such 12-month period shall be charged against equivalent amounts which were first credited and which are not already so charged; except that no amount obligated for administration during any such 12-month period may be charged against any amount credited during such a 12-month period earlier than the 24th preceding such period.

(2) Money credited to the account of this state pursuant to section 903 of the Social Security Act, as amended, may not be withdrawn or used except for the payment of benefits and for the payment of expenses for the administration of Laws 1957, chapter 883 and of public employment offices pursuant to this subdivision. Any moneys used for the payment of benefits may be restored for appropriation and use for administrative expenses upon request of the governor, under section 903(c) of the Social Security Act.

(3) Money requisitioned for the payment of expenses of administration pursuant to this subdivision shall be deposited in the economic security administration fund, but, until expended, shall remain a part of the reemployment insurance fund. The commissioner shall maintain a separate record of the deposit, obligation, expenditure, and return of funds so deposited. If any money so deposited is, for any reason, not to be expended for the purpose for which it was appropriated, or, if it remains unexpended at the end of the period specified by the law appropriating such money, it shall be withdrawn and returned to the secretary of the treasury of the United States for credit to this state's account in the unemployment trust fund.

Subd. 6. Advance on federal funds. (a) The governor is hereby authorized to make application as may be necessary to secure an advance of funds from the federal unemployment trust fund in accordance with United States Code, title 42, section 1321 of the Social Security Act.

(b) Any amount transferred to the fund under the terms of any application shall be repayable as provided in United States Code, title 42, sections 1101(d)(1), 1103(b)(2), and 1322 of the Social Security Act.

(c) Interest payable on any advance shall be paid in accordance with section 268.051, subdivision 8, paragraph (b).

History: *Ex 1936 c 2 s 3,11; 1937 c 306 s 8; 1937 c 452 s 1; 1939 c 443 s 2,9; 1941 c 554 s 2,10; 1943 c 650 s 8; 1945 c 376 s 2,10; 1947 c 432 s 8-10; 1949 c 605 s 2; 1953 c 97 s 3,4; 1957 c 883 s 2-5; 1961 c 517 s 1; 1965 c 45 s 45; 1969 c 9 s 64; 1969 c 310 s 1; 1969 c 567 s 3; 1971 c 942 s 13; 1975 c 302 s 1; 1979 c 181 s 16; 1Sp1982 c 1 s 4; 1983 c 216 art 1 s 87; 1983 c 372 s 8; 1985 c 248 s 70; 1Sp1985 c 13 s 300; 1986 c 444; 1989 c 209 art 2 s 1; 1994 c 488 s 8; 1996 c 417 s 31; 1997 c 66 s 79,80; 1998 c 265 s 33-35,40-42,45*

268.196 ECONOMIC SECURITY ADMINISTRATION FUND.

Subdivision 1. Administration fund. There is hereby created in the state treasury a special fund to be known as the economic security administration fund. All moneys which are deposited or paid into this fund shall be continuously available to the commissioner for expenditure in accordance with the provisions of sections 268.03 to 268.23, and shall not lapse at any time. The fund shall consist of all moneys received from the United States or any agency thereof, including the United States department of labor, and include any moneys received from any agency of the United States or any other state as compensation for services or facilities supplied to such agency, any amounts received pursuant to any surety bond or insurance policy or from other sources for losses sustained by the economic security administration fund or by reason of damage to equipment or supplies purchased from moneys in such fund, and any proceeds realized from the sale or disposition of any such equipment or supplies which may no longer be necessary for the proper administration of those sections. Notwithstanding any provision of this section, all money requisitioned and deposited in this fund pursuant to section 268.194, subdivision 5, shall remain part of the reemployment insurance fund and shall be used only in accordance with the conditions specified in section 268.194, subdivision 5. All moneys in this fund shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as are provided by law for the other special funds in the state treasury. The state treasurer shall be liable on the treasurer's official bond for the faithful performance of duties in connection with the economic security administration fund provided for under these sections. Such liability on the

official bond shall be effective immediately upon the enactment of this provision, and such liability shall exist in addition to any liability upon any separate bond existent on April 29, 1941, or which may be given in the future. All sums recovered on any surety bond for losses sustained by the economic security administration fund shall be deposited in this fund. All money in this fund, except money received pursuant to section 268.194, subdivision 5, clause (3); shall be expended solely for the purposes and in the amounts found necessary by the secretary of labor for the proper and efficient administration of the economic security program.

Subd. 2. State to replace money wrongfully used. If any money received under United States Code, title 42, section 501 of the Social Security Act or the Wagner-Peyser Act, are found by the United States Secretary of Labor, because of any action or contingency, to have been lost or been expended for purposes other than, or in amounts in excess of, those found necessary by the secretary of labor for the proper administration of these sections, the commissioner may, with the approval of the commissioner of administration, replace the money from the contingent account. If the money is not replaced from the contingent account, it is the policy of this state that the money be replaced by money appropriated for that purpose from the general funds of this state. Upon receipt of a finding by the secretary of labor, the commissioner shall promptly report the amount required for replacement to the governor and the governor shall, at the earliest opportunity, submit to the legislature a request for the appropriation of that amount.

Subd. 3. Contingent account. There is hereby created in the state treasury a special account, to be known as the economic security contingent account, which shall not lapse nor revert to any other fund. Such account shall consist of all money appropriated therefor by the legislature, all money in the form of interest and penalties collected pursuant to sections 268.057 and 268.18, and all money received in the form of voluntary contributions to this account and interest thereon. All money in such account shall be supplemental to all federal money that would be available to the commissioner but for the existence of this account. Moneys in this account are hereby appropriated to the commissioner and shall be available to the commissioner for such expenditures as the commissioner may deem necessary in connection with the administration of sections 268.04 to 268.23. Whenever the commissioner expends money from said contingent account for the proper and efficient administration of the Minnesota Economic Security Law for which funds have not yet been made available by the federal government, such money so withdrawn from the contingent account shall be replaced as hereinafter provided. Upon the deposit in the economic security administration fund of moneys which are received in reimbursement of payments made as above provided for said contingent account, the commissioner shall certify to the state treasurer the amount of such reimbursement and thereupon the state treasurer shall transfer such amount from the economic security administration fund to said contingent account. All money in this account shall be deposited, administered, and disbursed in the same manner and under the same conditions and requirements as is provided by law for the other special accounts in the state treasury. The state treasurer shall be liable on the treasurer's official bond for the faithful performance of duties in connection with the economic security contingent account provided for herein. Notwithstanding anything to the contrary contained herein, on June 30 of each year, except 1982, all amounts in excess of \$300,000 in this account shall be paid over to the reemployment insurance fund established under section 268.194 and administered in accordance with the provisions set forth therein.

History: *Ex1936 c 2 s 13; 1941 c 554 s 12; 1945 c 376 s 12; 1953 c 97 s 16; 1957 c 883 s 8-10; 1963 c 721 s 1; 1965 c 45 s 46; 1969 c 399 s 1; 1969 c 567 s 3; 1973 c 254 s 3; 1973 c 492 s 14; 1973 c 720 s 73 subd 1; 1974 c 497 s 1; 1975 c 302 s 2; 1Sp1982 c 1 s 33; 1983 c 216 art 1 s 87; 1986 c 444; 1987 c 362 s 25; 1987 c 385 s 27; 1989 c 209 art 2 s 1; 1994 c 488 s 8; 1996 c 417 s 31; 1997 c 7 art 1 s 106; 1997 c 66 s 79,80; 1998 c 265 s 43*

268.198 FREE EMPLOYMENT OFFICES.

Subdivision 1. Acceptance of federal act. A state employment service is hereby established in the department. The commissioner shall establish and maintain free public employment offices, in that number and in those places as may be necessary for the purpose of per-

forming the functions within the purview of the Wagner-Peyser Act, United States Code, title 29, chapter 4B.

Subd. 2. Financing. All moneys received by this state under such act of Congress referred to in subdivision 1 shall be paid into the economic security administration fund, and expended solely for the maintenance of state public employment offices. For the purpose of establishing and maintaining free public employment offices and promoting the use of their facilities, the commissioner is authorized to enter into agreements with the railroad retirement board or any other agency of the United States or of this or any other state charged with the administration of any law whose purposes are reasonably related to the purposes of sections 268.03 to 268.23.

Subd. 3. Veterans representatives. As may be determined by the commissioner, based on a demonstrated need for the service, there shall be assigned by the commissioner to the staff of each full functioning employment service office a veterans employment representative whose activities shall be devoted to discharging the duties prescribed of a veterans employment representative. The position of veterans employment representative shall be filled by one or more employees of the department who are veterans as defined in section 197.447.

History: *Ex1936 c 2 s 12; 1937 c 306 s 9; 1939 c 443 s 11; 1941 c 554 s 11; 1945 c 376 s 11; 1949 c 605 s 11; 1969 c 567 s 3; 1973 c 254 s 3; 1977 c 151 s 1; 1977 c 430 s 25 subd 1; 1980 c 350 s 1; 1983 c 216 art 1 s 87; 1Sp1985 c 14 art 9 s 75; 1989 c 209 art 2 s 1; 1994 c 483 s 1; 1996 c 417 s 31; 1997 c 66 s 65,79; 1998 c 265 s 44*

268.20 REPRESENTATION IN COURT.

In any civil action to enforce the provisions of sections 268.03 to 268.23, the commissioner shall be represented by the attorney general.

History: *(4337-37) Ex1936 c 2 s 17; 1941 c 554 s 16; 1989 c 209 art 2 s 1; 1996 c 417 s 31*

268.21 NONLIABILITY OF STATE.

(a) Benefits shall be considered to be due and payable only to the extent provided in this chapter and to the extent that money is available in the reemployment insurance fund and neither the state nor the commissioner shall be liable for any amount in excess of such sums.

(b) No person shall make any demand, bring any suit, or other proceeding to recover from the state any sum alleged to be due on a reemployment insurance account after the expiration of two years from the effective date of the reemployment insurance account.

History: *(4337-38) Ex1936 c 2 s 18; 1941 c 554 s 17; 1989 c 209 art 2 s 1; 1994 c 488 s 8; 1996 c 417 s 31; 1997 c 66 s 77; 1998 c 265 s 44*

268.22 SAVING CLAUSE.

The legislature reserves the right to amend or repeal all or any part of sections 268.03 to 268.23 at any time; and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred thereby, or by acts done pursuant thereto, shall exist subject to the power of the legislature to amend or repeal these sections at any time.

History: *(4337-39) Ex1936 c 2 s 19; 1941 c 554 s 18; 1991 c 199 art 2 s 1; 1996 c 417 s 31*

268.23 SEVERABLE.

In the event that the United States Department of Labor shall determine that any provision of sections 268.03 to 268.23, or any other provision of Minnesota Statutes relating to reemployment insurance, is not in conformity with various provisions of the Federal Internal Revenue Code or the Social Security Act then such provision shall have no force or effect for any purpose but if any such provision, or the application thereof to any person or circumstances, is held invalid, the remainder of said sections and the application of such provision to other persons or circumstances shall not be affected thereby.

History: *(4337-40) Ex1936 c 2 s 20; 1941 c 554 s 19; 1949 c 605 s 14; 1965 c 45 s 47; 1991 c 199 art 2 s 1; 1996 c 417 s 30,31*

268.231 [Repealed, 1996 c 417 s 32]

268.24 [Repealed, 1987 c 385 s 50]

268.25 [Repealed, 1998 c 265 s 46]

JUVENILE JUSTICE AND YOUTH INTERVENTION

268.29 JUVENILE JUSTICE PROGRAM.

The governor shall designate the department of economic security as the sole agency responsible for supervising the preparation and administration of the state plan for juvenile justice required by the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

The governor shall designate the juvenile justice advisory committee as the supervisory board for the department of economic security with respect to preparation and administration of the state plan and award of grants.

The governor shall appoint members to the juvenile justice advisory committee in accordance with the membership requirements of the Juvenile Justice and Delinquency Prevention Act of 1974, as amended.

History: 1987 c 312 art 1 s 22; 1994 c 483 s 1

NOTE: See section 15.059, subdivision 5a, for expiration of juvenile justice advisory committee.

268.30 GRANTS-IN-AID TO YOUTH INTERVENTION PROGRAMS.

Subdivision 1. **Grants.** The commissioner may make grants to nonprofit agencies administering youth intervention programs in communities where the programs are or may be established.

“Youth intervention program” means a nonresidential community-based program providing advocacy, education, counseling, and referral services to youth and their families experiencing personal, familial, school, legal, or chemical problems with the goal of resolving the present problems and preventing the occurrence of the problems in the future.

Subd. 2. **Applications.** Applications for a grant-in-aid shall be made by the administering agency to the commissioner. The grant-in-aid is contingent upon the agency having obtained from the community in which the youth intervention program is established local matching money two times the amount of the grant that is sought.

The commissioner shall provide by rule the application form, procedures for making application form, criteria for review of the application, and kinds of contributions in addition to cash that qualify as local matching money. No grant to any agency may exceed \$50,000.

History: 1987 c 312 art 1 s 23; 1996 c 408 art 2 s 2

268.31 [Repealed, 1994 c 632 art 4 s 84]

268.315 [Repealed, 1994 c 632 art 4 s 84]

268.32 [Repealed, 1994 c 632 art 4 s 84]

268.33 [Repealed, 1994 c 632 art 4 s 84]

268.34 [Repealed, 1994 c 632 art 4 s 84]

268.35 [Repealed, 1994 c 632 art 4 s 84]

268.36 [Repealed, 1994 c 632 art 4 s 84]

PLANNING FOR YOUTH EMPLOYMENT

268.361 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of sections 268.361 to 268.366, the following terms have the meanings given them.

Subd. 2. **Advisory committee.** "Advisory committee" means the committee established in section 268.363.

Subd. 3. **Commissioner.** "Commissioner" means the commissioner of economic security.

Subd. 4. **Eligible organization.** "Eligible organization" means a public agency or a nonprofit organization that can demonstrate an ability to implement a program for education and training services provided to targeted youth. Eligible organizations may include local jurisdictions, public school districts, private nonsectarian schools, post-secondary educational institutes, alternative schools, community groups, and labor organizations.

Subd. 4a. **Program.** "Program" means the services and activities performed or contracted for by an eligible organization for which a grant has been received or for which a grant application has been submitted to the commissioner.

Subd. 5. **Homeless individual.** "Homeless individual" or "homeless person" means:

- (1) an individual who lacks a fixed, regular, and adequate nighttime residence; and
- (2) an individual who has a primary nighttime residence that is:
 - (i) a supervised publicly or privately operated shelter or dwelling designed to provide temporary living accommodations;
 - (ii) an institution that provides a temporary residence for individuals intended to be institutionalized; or
 - (iii) a public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for humans.

The term "homeless individual" does not include any individual imprisoned or otherwise detained under federal or state law.

Subd. 6. **Targeted youth.** "Targeted youth" means at-risk persons who are at least 16 years of age but not older than 24 years of age, are eligible for the high school graduation incentive program under section 124D.68, subdivision 2, or are economically disadvantaged as defined in United States Code, title 29, section 1503, and are part of one of the following groups:

- (1) persons who are not attending any school and have not received a secondary school diploma or its equivalent; or
- (2) persons currently enrolled in a traditional or alternative school setting or a GED program and who, in the opinion of an official of the school, are in danger of dropping out of the school.

Subd. 7. **Very low income.** "Very low income" means incomes that are at or less than 50 percent of the area median income, adjusted for family size, as estimated by the department of housing and urban development.

History: 1988 c 686 art 3 s 1; 1989 c 328 art 7 s 1,2; 1991 c 345 art 2 s 47; 1993 c 369 s 80,81; 1994 c 483 s 1; 1997 c 7 art 1 s 107; 1998 c 397 art 11 s 3

268.362 GRANTS.

Subdivision 1. **Generally.** (a) The commissioner shall make grants to eligible organizations for programs to provide education and training services to targeted youth. The purpose of these programs is to provide specialized training and work experience for targeted youth who have not been served effectively by the current educational system. The programs are to include a work experience component with work projects that result in the rehabilitation, improvement, or construction of (1) residential units for the homeless, or (2) education, social service, or health facilities which are owned by a public agency or a private nonprofit organization.

(b) Eligible facilities must principally provide services to homeless or very low income individuals and families, and include the following:

- (1) Head Start or day care centers;
- (2) homeless, battered women, or other shelters;
- (3) transitional housing;
- (4) youth or senior citizen centers; and

(5) community health centers.

Two or more eligible organizations may jointly apply for a grant. The commissioner shall administer the grant program.

Subd. 2. Grant applications; awards. Interested eligible organizations must apply to the commissioner for the grants. The advisory committee must review the applications and provide to the commissioner a list of recommended eligible organizations that the advisory committee determines meet the requirements for receiving a grant. The total grant award for any program may not exceed \$80,000 per year. In awarding grants, the advisory committee and the commissioner must give priority to:

(1) continuing and expanding effective programs by providing grant money to organizations that are operating or have operated a successful program that meets the program purposes under section 268.364; and

(2) distributing programs throughout the state through start-up grants for programs in areas that are not served by an existing program.

To receive a grant under this section, the eligible organization must match the grant money with at least an equal amount of nonstate money. The commissioner must verify that the eligible organization has matched the grant money. Nothing in this subdivision shall prevent an eligible organization from applying for and receiving grants for more than one program. A grant received by an eligible organization from the federal Youthbuild Project under United States Code, title 42, section 5091, is nonstate money and may be used to meet the state match requirement. State grant money awarded under this section may be used by grantee organizations for match requirements of a federal Youthbuild Project.

History: 1988 c 686 art 3 s 2; 1989 c 328 art 7 s 3; 1992 c 376 art 5 s 1; 1993 c 369 s 82

268.3625 ADMINISTRATIVE COSTS.

The commissioner may use up to five percent of the biennial appropriation for Youthbuild from the general fund to pay costs incurred by the department in administering Youthbuild during the biennium.

History: 1997 c 200 art 1 s 65

268.363 ADVISORY COMMITTEE.

A 13-member advisory committee is established as provided under section 15.059 to assist the commissioner in selecting eligible organizations to receive program grants and evaluating the final reports of each organization. Notwithstanding section 15.059, the advisory committee shall not expire before June 30, 1995. Members of the committee may be reimbursed for expenses but may not receive any other compensation for service on the committee. The advisory committee consists of representatives of the commissioners of children, families, and learning, human services, and economic security; a representative of the chancellor of the Minnesota state colleges and universities; a representative of the commissioner of the housing finance agency; the director of the office of jobs policy; and seven public members appointed by the governor. Each of the following groups must be represented by a public member experienced in working with targeted youth: labor organizations, local educators, community groups, consumers, local housing developers, youth between the ages of 16 and 24 who have a period of homelessness, and other homeless persons. At least three of the public members must be from outside of the metropolitan area as defined in section 473.121, subdivision 2. The commissioner may provide staff to the advisory committee to assist it in carrying out its purpose.

History: 1988 c 686 art 3 s 3; 1990 c 375 s 3; 1993 c 132 s 5; 1993 c 369 s 83; 1994 c 483 s 1; 1Sp1995 c 3 art 16 s 13; 1996 c 339 s 6; 1996 c 395 s 18

268.364 PROGRAM PURPOSE AND DESIGN.

Subdivision 1. Program purpose. The grants awarded under section 268.362 are for a youth employment and training program directed at targeted youth who are likely to be at risk of not completing their high school education. Each program must include education, work

experience, job skills, and leadership training and peer support components. Each participant must be offered counseling and other services to identify and overcome problems that might interfere with successfully completing the program.

Subd. 2. Education component. A program must contain an education component that requires program participants to complete their secondary education in a traditional public or private secondary school, a suitable alternative school setting, or a GED program. Program participants must be working toward the completion of their secondary education or literacy advancement.

Subd. 3. Work experience component. A work experience component must be included in each program. The work experience component must provide vocational skills training in an industry where there is a viable expectation of job opportunities. A training subsidy, living allowance, or stipend, not to exceed an amount equal to 100 percent of the poverty line for a family of two as defined in United States Code, title 42, section 673, paragraph (2), may be provided to program participants. The wage or stipend must be provided to participants who are recipients of public assistance in a manner or amount which will not reduce public assistance benefits. The work experience component must be designed so that work projects result in (1) the expansion or improvement of residential units for homeless persons and very low income families, or (2) rehabilitation, improvement, or construction of eligible education, social service, or health facilities that principally serve homeless or very low income individuals and families. Any work project must include direct supervision by individuals skilled in each specific vocation. Program participants may earn credits toward the completion of their secondary education from their participation in the work experience component.

Subd. 4. Job readiness skills component. A job readiness skills component must comprise at least 20 percent of each program. The component must provide program participants with job search skills, placement assistance, and other job readiness skills to ensure that participants will have an understanding of the building trades, unions, self-employment, and other employment opportunities and be able to compete in the employment market.

Subd 5. [Repealed by amendment, 1989 c 328 art 7 s 4]

Subd. 6. Leadership training and peer support component. Each program must provide participants with meaningful opportunities to develop leadership skills such as decision making, problem solving, and negotiating. The program must encourage participants to develop strong peer group ties that support their mutual pursuit of skills and values.

History: 1988 c 686 art 3 s 4; 1989 c 328 art 7 s 4; 1992 c 376 art 5 s 2; 1993 c 369 s 84-86

268.365 HOUSING FOR HOMELESS.

Subd. 1. [Repealed, 1993 c 369 s 146]

Subd. 2. Priority for housing. Any residential or transitional housing units that become available through a work project that is part of the program described in section 268.364 must be allocated in the following order:

- (1) homeless targeted youth who have participated in constructing, rehabilitating, or improving the unit;
- (2) homeless families with at least one dependent;
- (3) other homeless individuals;
- (4) other very low income families and individuals; and
- (5) families or individuals that receive public assistance and that do not qualify in any other priority group.

Subd. 3. Acquisition of housing units. The eligible organization receiving a grant under section 268.362 shall acquire property or buildings for the construction or rehabilitation of residential units at the lowest possible cost. Possible sources of property and funding include the federal Department of Housing and Urban Development, Farmers Home Administration, Minnesota housing finance agency, and the local housing authority.

Subd. 4. Management of residential units. The program must address how to manage these residential units, including the source of financing for the maintenance costs of the

buildings. Any management plan must include the participation of the residents and local established neighborhood groups.

History: 1988 c 686 art 3 s 5; 1989 c 328 art 7 s 5; 1992 c 376 art 5 s 3; 1993 c 369 s 87

268.366 REQUIREMENTS OF ORGANIZATIONS RECEIVING GRANTS.

An organization that is awarded a grant shall prepare and submit an annual report to the commissioner by September 1 of each year. The report must include a discussion of the following:

(1) the process used for encouraging the participation of the targeted youth in the geographic area surrounding the organization receiving the grant;

(2) the support services and social services that targeted youth received under the program. Services may include client needs assessment, preemployment skills such as basic job skills and behavior, and intermediate needs such as education and chemical dependency treatment;

(3) the type and degree of work experience that program participants received, including real work experience in both vocational and nonvocational settings;

(4) the amount of training subsidy or stipend that each participant received while participating in the work experience component. The subsidy or stipend must reflect prevailing wage and benefits standards appropriate for preapprenticeship training unless a participant's receipt of public assistance is affected. The subsidy or stipend should be structured to include incentives for progress toward increasing job skills and completing secondary education;

(5) the means of providing the necessary job readiness skills to program participants who have completed the work experience and educational components of the program so they have the ability to compete in the job market. These job search skills may include skills assessment, job search and selection, application preparation and assistance in preparing for job interviews;

(6) the methods used to assist in placing program participants in suitable employment. The methods should include means of involving state government, businesses, labor organizations, community groups, and local jurisdictions in assisting in the placement;

(7) the process used for evaluating the program, including the necessary data elements collected from program participants after they have completed the program for monitoring the success of the program;

(8) the method used to maximize parental involvement in the program;

(9) the existing public and private programs that were utilized by the program to avoid duplication of services;

(10) the regional characteristics that affected the operation of the program in the specific region where the organization is located;

(11) the means of addressing the special needs of priority groups of targeted youth, including:

(i) persons who are responsible for at least one dependent;

(ii) persons who are pregnant;

(iii) persons who are or have been subject to any stage of the criminal justice system and who may benefit from receiving employment and training services in overcoming barriers to employment resulting from a record of arrest or conviction;

(iv) persons receiving income maintenance services and social services, including chemical dependency treatment, vocational rehabilitation services, and protection services;

(v) persons who reside on a farm who personally derive or whose family derives a substantial portion of their income from farming, lack nonfarm work skills, or have limited access to vocational education or work experience opportunities;

(vi) homeless youth; and

(vii) minors who are not financially dependent on a parent or a guardian;

(12) costs for each of the components of the program; and

(13) the identification of the funding sources other than state appropriations that were used to support the program.

History: 1988 c 686 art 3 s 6; 1989 c 328 art 7 s 6

268.367 [Repealed, 1996 c 339 s 10]

268.37 [Repealed, 1998 c 273 s 15]

268.371 [Repealed, 1998 c 273 s 15]

268.38 Subdivision 1. [Repealed, 1998 c 273 s 15]

Subd. 2. [Repealed, 1998 c 273 s 15]

Subd. 3. [Repealed, 1998 c 273 s 15]

Subd. 4. [Repealed, 1998 c 273 s 15]

Subd. 5. [Repealed, 1998 c 273 s 15]

Subd. 6. [Repealed, 1998 c 273 s 15]

Subd. 7. [Repealed, 1998 c 273 s 15]

Subd. 8. [Repealed, 1998 c 273 s 15]

Subd. 9. [Repealed, 1998 c 273 s 15]

Subd. 10. [Deleted, 1995 c 233 art 2 s 56]

Subd. 11. [Repealed, 1996 c 339 s 10]

Subd. 12. [Repealed, 1998 c 273 s 15]

Subd. 13. [Renumbered 119A.43 subd 11]

268.39 [Repealed, 1997 c 200 art 4 s 23]

268.40 [Expired]

268.41 [Expired]

268.42 [Expired]

268.43 [Expired]

268.52 [Renumbered 119A.374]

268.53 Subdivision 1. [Renumbered 119A.375 subd 1]

Subd. 1a. [Renumbered 119A.375 subd 2]

Subd. 2. [Renumbered 119A.375 subd 3]

Subd. 3. [Renumbered 119A.375 subd 4]

Subd. 4. [Renumbered 119A.375 subd 5]

Subd. 5. [Renumbered 119A.375 subd 6]

Subd. 6. [Renumbered 119A.375 subd 7]

Subd. 7. [Renumbered 119A.375 subd 8]

268.54 [Renumbered 119A.376]

268.55 [Repealed, 1998 c 273 s 15]

WAGE SUBSIDY PROGRAM

268.551 DEFINITIONS.

Subdivision 1. **Terms.** For the purposes of this section and section 268.552, the terms defined in this section have the meanings given them:

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of economic security.

Subd. 3. **Eligible applicant.** "Eligible applicant" means a person who:

(1) has been a resident of this state for at least one month;

(2) is unemployed;
 (3) is not receiving and is not eligible to receive reemployment insurance; and
 (4) is a targeted young person as defined in Laws 1990, chapter 562, article 4, section 12, between the ages of 14 and 21, who, because of a lack of personal resources and skills, needs assistance in setting and realizing education goals and in becoming a contributing member of the community.

Subd. 4. **Employer.** "Employer" means a private or public employer.

History: 1991 c 345 art 1 s 81; 1994 c 483 s 1; 1994 c 488 s 8

268.552 WAGE SUBSIDY PROGRAM.

Subdivision 1. **Creation.** A grant program is established to provide adolescents with opportunities for gaining a high school diploma, exploring occupations, evaluating vocational options, receiving career and life skills counseling, developing and pursuing personal goals, and participating in community-based projects and summer youth employment.

Subd. 2. **Amount and duration of subsidy.** The maximum subsidy is \$4 per hour for wages and \$1 per hour for fringe benefits. The subsidy for an eligible applicant may be paid for a maximum of 1,040 hours over a period of 26 weeks. Employers are encouraged to use money from other sources to provide increased wages to applicants they employ.

Subd. 3. **Contracts to administer.** The commissioner may contract with local service units or certified local service providers to deliver the wage subsidies. The contract must require that no more than five percent of the contract amount be expended for administration.

Subd. 4. **Area allocation of subsidies.** Wage subsidy money must be allocated to local service units based on the number of eligible applicants in that area compared to the state total of eligible applicants. Money may be reallocated if it otherwise would not be used.

Subd. 5. **Allocation to applicants.** Priority for subsidies shall be in the following order:

- (1) applicants living in households with no other income source;
- (2) applicants whose incomes and resources are less than the standard for eligibility for general assistance; and
- (3) applicants who are eligible for aid to families with dependent children or Minnesota family investment program—statewide.

Subd. 6. **Outreach.** A local service unit shall publicize the availability of wage subsidies within its area.

Subd. 7. **Reports.** Each entity delivering wage subsidies shall report to the commissioner on a quarterly basis:

- (1) the number of persons placed in private sector jobs, in temporary public sector jobs, or in other services;
- (2) the outcome for each participant placed;
- (3) the number and type of employers employing persons under the program;
- (4) the amount of money spent in each local service unit for wages for each type of employment and each type of other expense;
- (5) the age, educational experience, family status, gender, priority group status, race, and work experience of each person in the program;
- (6) the amount of wages received by persons while in the program and 60 days after completing the program;
- (7) for each classification of persons described in clause (5), the outcome of the wage subsidy placement, including length of time employed; nature of employment, whether private sector, temporary public sector, or other service; and the hourly wages; and
- (8) any other information requested by the commissioner. Each report must include cumulative information, as well as information for each quarter.

Data collected on individuals under this subdivision are private data on individuals as defined in section 13.02, subdivision 12, except that summary data may be provided under section 13.05, subdivision 7.

Subd. 8. **Part-time employment.** Subsidies under this section may be paid for part-time jobs.

Subd. 9. **Layoffs; work reductions.** An employer may not lay off, terminate, or reduce the working hours of an employee for the purpose of hiring an individual with funds provided by this section. An employer may not hire an individual with funds available under this section if any other person is on layoff from the same or a substantially equivalent job.

Subd. 10. **Rules.** The commissioner may adopt rules to implement this section.

History: 1991 c 345 art 1 s 82; 1997 c 85 art 4 s 27

MINNESOTA YOUTH PROGRAM

268.56 MINNESOTA YOUTH PROGRAM; DEFINITIONS.

Subdivision 1. **Scope.** For the purposes of this section and section 268.561, the terms defined in this section have the meanings given them:

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of economic security.

Subd. 3. **Eligible applicant.** "Eligible applicant" means an individual who is between the ages of 14 and 21 and economically disadvantaged.

An at-risk youth who is classified as a family of one is deemed economically disadvantaged. For purposes of eligibility determination the following individuals are considered at risk:

- (1) a pregnant or parenting youth;
- (2) a youth with limited English proficiency;
- (3) a potential or actual school dropout;
- (4) a youth in an offender or diversion program;
- (5) a public assistance recipient or a recipient of group home services;
- (6) a youth with disabilities including learning disabilities;
- (7) a chemically dependent youth or child of drug or alcohol abusers;
- (8) a homeless or runaway youth;
- (9) a youth with basic skills deficiency;
- (10) a youth with an educational attainment of one or more levels below grade level appropriate to age; or
- (11) a foster child.

Subd. 4. **Employer.** "Employer" means a private or public employer.

History: 1994 c 483 s 1; 1994 c 632 art 4 s 66

268.561 MINNESOTA YOUTH PROGRAM.

Subdivision 1. **Purpose.** The Minnesota youth program is established to:

- (1) improve the employability of eligible applicants through exposure to public or private sector work;
- (2) enhance the basic educational skills of eligible applicants;
- (3) encourage the completion of high school or equivalency;
- (4) assist eligible applicants to enter employment, school-to-work transition programs, the military, or post-secondary education or training;
- (5) enhance the citizenship skills of eligible applicants through community service and service-learning; and
- (6) provide educational, career, and life skills counseling.

Subd. 2. **Wage rate.** The rate of pay for Minnesota youth program positions with public, private nonprofit, and private for-profit employers is the minimum wage. Employers may use their own funds to increase the participants' hourly wage rates. Youths designated as supervisors may be paid at a higher level to be determined by the local contractor.

Subd. 3. **Employment contracts.** The commissioner may enter into arrangements with existing public and private nonprofit organizations and agencies with experience in administering youth employment programs for the purpose of providing employment opportunities

for eligible applicants in furtherance of this section and section 268.56. The department of economic security shall retain ultimate responsibility for the administration of this employment program.

Subd. 4. **Contract administration.** Preference shall be given to local contractors with experience in administering youth employment and training programs and those who have demonstrated efforts to coordinate state and federal youth programs locally.

Subd. 5. **Allocation formula.** Seventy percent of Minnesota youth program funds must be allocated based on the county's share of economically disadvantaged youth. The remaining 30 percent must be allocated based on the county's share of population ages 14 to 21.

Subd. 6. **Allowable cost categories.** Of the total allocation, up to 15 percent may be used for administrative purposes and the remainder may be used for a combination of training and participant support activities.

Subd. 7. **Reports.** Each contractor shall report to the commissioner on a quarterly basis in a format to be determined by the commissioner.

Data collected on individuals under this subdivision are private data on individuals as defined in section 13.02, subdivision 12, except that summary data may be provided under section 13.05, subdivision 7.

Subd. 8. **Part-time employment.** Wages and subsidies under this section may be paid for part-time employment.

Subd. 9. **Layoffs; worker reductions.** An employer may not lay off, terminate, or reduce the working hours of an employee for the purpose of hiring an individual with funds provided by this section. An employer may not hire an individual with funds available under this section if any other individual is laid off from the same or a substantially equivalent job.

Subd. 10. **Rules.** The commissioner may adopt rules to implement this section.

History: 1994 c 483 s 1; 1994 c 632 art 4 s 67; 1Sp1995 c 3 art 4 s 30.

JOB TRAINING

268.60 PURPOSE.

It is the purpose of sections 268.60 to 268.64 to provide financial assistance for comprehensive job training and related services for economically disadvantaged, unemployed, and underemployed individuals through opportunities industrialization centers.

History: 1983 c 312 art 6 s 1

268.61 DEFINITIONS.

Subdivision 1. **Scope.** When used in sections 268.60 to 268.64 the terms in this section have the meanings given them.

Subd. 2. **Commissioner.** "Commissioner" means the commissioner of economic security.

Subd. 3. **Council.** "Council" means the Minnesota state council of the opportunities industrialization centers of America.

Subd. 4. **Economically disadvantaged.** "Economically disadvantaged" means an individual who meets the criteria for an economically disadvantaged person established by rule by the commissioner.

Subd. 5. **Underemployed.** "Underemployed" means an individual:

(a) Working part time but seeking full-time work; or

(b) Working full time but receiving wages below the greater of:

(1) the poverty level determined in accordance with criteria established by the department of economic security; or

(2) 70 percent of the lower living standard income level as determined by the United States Bureau of Labor Statistics.

Subd. 6. **Unemployed.** "Unemployed" means an individual who is without a job, and who wants and is available for work.

History: 1983 c 312 art 6 s 2; 1Sp1985 c 14 art 9 s 75; 1994 c 483 s 1

268.62 DISTRIBUTION AND USE OF STATE MONEY.

The commissioner shall distribute the money appropriated for:

- (a) comprehensive job training and related services or job opportunities programs for economically disadvantaged, unemployed, and underemployed individuals, including persons of limited English speaking ability, through opportunities industrialization centers; and
- (b) the establishment and operation in Minnesota of these centers.

Comprehensive job training and related services include: recruitment, counseling, remediation, motivational prejob training, vocational training, job development, job placement, and other appropriate services enabling individuals to secure and retain employment at their maximum capacity.

History: 1983 c 312 art 6 s 3

268.63 CRITERIA FOR DISTRIBUTION OF MONEY.

The commissioner, with the advice of the council, shall establish criteria for the distribution of state money for the purpose of section 268.62. The criteria shall include requirements that:

- (a) the program receiving state assistance:
 - (1) involve residents in the area to be served by the program in the planning and operation of the program; and
 - (2) involve the business community in the area to be served by the program in its development and operation;
- (b) the distribution of assistance among areas within the state be equitable, with priority being given to areas with high unemployment or underemployment;
- (c) financial assistance under sections 268.60 to 268.64 to any program may not exceed 25 percent of the cost of the program including costs of administration; and
- (d) a program receiving financial assistance has adequate internal administrative controls, accounting procedures, personnel standards, evaluation procedures, availability of in-service training and technical assistance programs, and other policies necessary to promote the effective use of state money.

The commissioner may make a distribution in excess of the limit prescribed in clause (c) if the commissioner determines that the excess distribution is necessary to further the objectives of sections 268.60 and 268.62.

History: 1983 c 312 art 6 s 4

268.64 MONEY DISTRIBUTION.

The commissioner may make a distribution of money directly to a program, or make a distribution subject to conditions that ensure use consistent with the distribution and utilization of money under federal legislation regarding job training and related services.

History: 1983 c 312 art 6 s 5

268.65 APPROVED TRAINING.

Subdivision 1. Creation. The commissioner of economic security shall establish a training program for structurally unemployed workers under which individuals may be enrolled in an on-the-job training program, and an additional 1,000 individuals may be enrolled in classroom training, in accordance with this section. Nothing in this section limits or adversely affects the approved training provisions applicable to an individual under section 268.085, subdivision 1, clause (3). An individual approved under this section is eligible for tuition aid under the provisions of chapter 136A.

Subd. 2. Approval of training. An individual's enrollment in a training course must be approved for the purposes of this subdivision if the commissioner finds that:

- (1) the individual is not unemployed due to the seasonal nature of the work or a temporary work shortage;
- (2) the individual's separation or notice of layoff from most recent employment was caused by job obsolescence, plant shutdown, regional decline in the individual's customary

occupation, or industry slowdown, and the individual is unlikely to return to work for that employer or in that occupation within 12 months following separation from employment;

(3) reasonable and suitable work opportunities for which the individual is fitted by training, experience, and physical capabilities do not exist within the local labor market;

(4) the training course is designed to provide preparation for available employment within the local labor market or in an area to which the individual is willing to relocate;

(5) the training is conducted by an agency, educational institution, or employing unit that is approved by the commissioner of children, families, and learning or the board of trustees of the Minnesota state colleges and universities or higher education services office to conduct training programs; except that an agency, educational institution, or employing unit that is not subject to regulation and approval by one of the agencies in this clause may be approved by the commissioner if it is determined that the institution's curriculum, facilities, staff, and other essentials are adequate to achieve the training objective; and

(6) the training consists of a full course load, as defined by the training provider, necessary to achieve the approved training objective, and the individual is making satisfactory progress in the course. The department may require the training provider to periodically certify to the individual's attendance and progress.

Subd. 3. On-the-job training. An individual who meets the criteria in subdivision 2 is eligible for participation in a full-time on-the-job training program if:

(1) the on-the-job training position is in an occupation for which the commissioner has determined a demand exists or will exist; in making this determination, the commissioner shall consider labor market information as contained in state and national occupational outlook publications, as well as other generally accepted authoritative sources with verifiable validity;

(2) the employer pays an hourly wage during training of at least the state minimum wage;

(3) the employer guarantees to provide at least 12 consecutive months of employment to the trainee after the completion of training at the prevailing area labor market wage for a trained individual in that occupation;

(4) the employer will not terminate the trainee during the period of training or guaranteed employment except for misconduct or demonstrated substandard performance; and

(5) the employer will not terminate, lay off, or reduce the hours of any employee for the purpose of hiring an individual with money available, and will not hire an individual if another person is on layoff from the same or a substantially equivalent job.

Subd. 4. Training allowance. During participation in an approved on-the-job training program, the trainee shall maintain satisfactory progress and attendance. During the period of training specified in the agreement between the commissioner and the employer, individuals participating in an approved on-the-job training program must be paid a training allowance for each week claimed during the benefit year, until benefits are exhausted, equal to the weekly benefit amount calculated under section 268.07, subdivision 2, less the part of the earnings, including holiday pay, in excess of \$100. The training allowance is computed by rounding down to the nearest dollar amount. Notwithstanding any other provision, an individual participating in on-the-job training on a full-time basis is not employed for purposes of benefit eligibility.

Subd. 5. Employer penalty. An employer who enters into an on-the-job training agreement with the commissioner and who terminates the trainee in a manner other than provided in this subdivision shall repay 70 percent of the amount of reemployment insurance benefits paid to the individual while in the training program with that employer if the termination occurs during the training period. If the termination occurs during the 12-month period of guaranteed employment, the employer receives a proportional reduction in the amount it must repay. Penalties assessed under this subdivision are in addition to any other penalties provided for by this chapter and are subject to the same collection procedures that apply to past due contributions under this chapter. Penalties under this subdivision shall be paid to the commissioner and credited to the job search and relocation fund. When it is determined to be in the best interest of the state, the commissioner may waive all or part of the employer penalty. The commissioner shall use any money collected under this paragraph for

job search and relocation expenses of structurally unemployed workers participating in the training program.

History: *1Sp1985 c 14 art 9 s 46; 1987 c 385 s 46; 1994 c 483 s 1; 1995 c 212 art 3 s 59; 1Sp1995 c 3 art 16 s 13; 1996 c 339 s 7; 1996 c 395 s 18; 1997 c 66 s 80; 1998 c 265 s 45*

268.66 FIRST SOURCE AGREEMENTS.

Subdivision 1. List of vacancies. A business or private enterprise receiving grants or loans from the state in amounts over \$200,000 a year shall as part of the grant or loan agree to list any vacant or new positions with the job services of the commissioner of economic security or the local service units.

Subd. 2. Grant and loan agreements. The commissioner of trade and economic development shall incorporate the provisions of this section into grant and loan agreements and assist the commissioner of economic security and the local service units to promote private sector listings with job services and to evaluate their effect on employers and individuals who are referred.

History: *1Sp1985 c 14 art 9 s 47; 1987 c 312 art 1 s 26 subd 2; 1994 c 483 s 1*

268.665 WORKFORCE DEVELOPMENT COUNCIL.

Subdivision 1. Creation. The governor's workforce development council is created under the authority of the Job Training Partnership Act, United States Code, title 29, section 1501, et seq. Local workforce development councils are authorized under the Job Training Partnership Act, United States Code, title 29, section 1501 and the one stop career center system.

Subd. 2. Membership. The governor's workforce development council is composed of 33 members appointed by the governor. The members may be removed pursuant to section 15.059. In selecting the representatives of the council, the governor shall ensure that 50 percent of the members come from nominations provided by local workforce councils. Local education representatives shall come from nominations provided by local education to employment partnerships. The 33 members shall represent the following sectors:

(a) State agencies: the following individuals shall serve on the council:

- (1) commissioner of the Minnesota department of economic security;
- (2) commissioner of the Minnesota department of children, families, and learning;
- (3) commissioner of the Minnesota department of human services; and
- (4) commissioner of the Minnesota department of trade and economic development.

(b) Business and industry: six individuals shall represent the business and industry sectors of Minnesota.

(c) Organized labor: six individuals shall represent labor organizations of Minnesota.

(d) Community-based organizations: four individuals shall represent community-based organizations of Minnesota. Community-based organizations are defined by the Job Training Partnership Act as private nonprofit organizations that are representative of communities or significant segments of communities and that provide job training services, agencies serving youth, agencies serving individuals with disabilities, agencies serving displaced homemakers, union-related organizations, and employer-related nonprofit organizations and organizations serving nonreservation Indians and tribal governments.

(e) Education: six individuals shall represent the education sector of Minnesota as follows:

- (1) one individual shall represent local public secondary education;
- (2) one individual shall have expertise in design and implementation of school-based service-learning;
- (3) one individual shall represent post-secondary education;
- (4) one individual shall represent secondary/post-secondary vocational institutions;
- (5) the chancellor of the board of trustees of the Minnesota state colleges and universities; and
- (6) one individual shall have expertise in agricultural education.

(f) Other: two individuals shall represent other constituencies including:

(1) units of local government; and

(2) applicable state or local programs.

The speaker and the minority leader of the house of representatives shall each appoint a representative to serve as an ex officio member of the council. The majority and minority leaders of the senate shall each appoint a senator to serve as an ex officio member of the council. After January 1, 1997, the Minnesota director of the corporation for national service shall also serve as an ex officio member.

(g) Appointment: each member shall be appointed for a term of three years from the first day of January or July immediately following their appointment. Elected officials shall forfeit their appointment if they cease to serve in elected office.

(h) Members of the council are compensated as provided in section 15.059, subdivision 3.

Subd. 3. Purpose; duties. The governor's workforce development council shall replace the governor's job training council and assume all of its requirements, duties, and responsibilities, under the Job Training Partnership Act, United States Code, title 29, section 1501, et seq. Additionally, the workforce development council shall assume the following duties and responsibilities:

(a) Coordinate the development, implementation, and evaluation of the statewide education and employment transitions system under section 124D.46. Beginning January 1, 1997, the council shall also coordinate the development, implementation, and evaluation of the Minnesota youth services programs under sections 124D.39 to 124D.44, and the National and Community Services Act of 1993, United States Code, title 42, section 12501, et seq.

(b) Review the provision of services and the use of funds and resources under applicable federal human resource programs and advise the governor on methods of coordinating the provision of services and the use of funds and resources consistent with the laws and regulations governing the programs. For purposes of this section, applicable federal and state human resource programs mean the:

(1) Job Training Partnership Act, United States Code, title 29, section 1501, et seq.;

(2) Carl D. Perkins Vocational and Applied Technology Education Act, United States Code, title 20, section 2301, et seq.;

(3) National and Community Service Act of 1993, United States Code, title 42, section 12501, et seq.;

(4) Adult Education Act, United States Code, title 20, section 1201, et seq.;

(5) Wagner-Peyser Act, United States Code, title 29, section 49;

(6) Social Security Act, title IV, part F, (JOBS), United States Code, title 42, section 681, et seq.;

(7) Food Stamp Act of 1977, United States Code, title 7, section 6(d)(4), Food Stamp Employment and Training Program, United States Code, title 7, section 2015(d)(4);

(8) programs defined in section 268.0111, subdivisions 4 and 5; and

(9) School to Work Opportunity Act of 1994, Public Law Number 103-239.

Additional federal and state programs and resources can be included within the scope of the council's duties if recommended by the governor after consultation with the council.

(c) Review federal, state, and local education, post-secondary, job skills training, and youth employment programs, and make recommendations to the governor and the legislature for establishing an integrated seamless system for providing education, service-learning, and work skills development services to learners and workers of all ages.

(d) Advise the governor on the development and implementation of statewide and local performance standards and measures relating to applicable federal human resource programs and the coordination of performance standards and measures among programs.

(e) Develop program guidelines and recommend grant approval procedures to the department of children, families, and learning for grants to local education and employment transition partnerships, including implementation grants under section 124D.46, grants for youth apprenticeship programs under section 124D.47, and youth employer grants; and

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(1) coordinate implementation of the education and employment transitions system under section 124D.46;

(2) promote education and employment transitions programs and knowledge and skills of entrepreneurship among employers, workers, youth, and educators, and encourage employers to provide meaningful work-based learning opportunities;

(3) evaluate and identify exemplary education and employment transitions programs and provide technical assistance to local partnerships to replicate the programs throughout the state;

(4) establish a performance-based quality assurance system for consistent statewide evaluation of the performance of the education and employment transitions system at both the state and local level;

(5) conduct an annual review of each local education and employment transitions partnership to ensure it adequately meets the quality assurance standards established as part of the state quality assurance system;

(6) develop the methods to assess local partnership effectiveness;

(7) annually publish a report on the findings of the evaluations of each local education transitions partnership;

(8) promote knowledge and skills of entrepreneurship among students in kindergarten through grade 12 by sharing information about the ways new business development contributes to a strong economy.

(f) Advise the governor on methods to evaluate applicable federal human resource programs.

(g) Sponsor appropriate studies to identify human investment needs in Minnesota and recommend to the governor goals and methods for meeting those needs.

(h) Recommend to the governor goals and methods for the development and coordination of a human resource system in Minnesota.

(i) Examine federal and state laws, rules, and regulations to assess whether they present barriers to achieving the development of a coordinated human resource system.

(j) Recommend to the governor and to the federal government changes in state or federal laws, rules, or regulations concerning employment and training programs that present barriers to achieving the development of a coordinated human resource system.

(k) Recommend to the governor and to the federal government waivers of laws and regulations to promote coordinated service delivery.

(l) Sponsor appropriate studies and prepare and recommend to the governor a strategic plan which details methods for meeting Minnesota's human investment needs and for developing and coordinating a state human resource system.

Subd. 4. Subcommittees. The governor's workforce development council shall appoint an advisory subcommittee the majority of whose members shall represent business and industry to advise the council on the establishment of the statewide education and employment transitions system. The chair of the workforce development council may establish subcommittees in order to carry out the duties and responsibilities of the council.

Subd. 5. Staffing. The department of economic security must provide staff support to the Minnesota workforce development council. The department of economic security and the department of children, families, and learning shall jointly staff the education and employment transitions subcommittee and its activity with the full council. The support includes professional, technical, and clerical staff necessary to perform the duties assigned to the workforce development council. The council may ask for assistance from other units of state government as it requires in order to fulfill its duties and responsibilities.

Subd. 6. Expiration. The council expires immediately if it is no longer required by federal law as a condition of receiving federal funding, or if there is no federal funding for the human resource programs within the scope of the council's duties.

History: 1995 c 131 s 1; 1Sp1995 c 3 art 16 s 13; 1996 c 395 s 18; 1Sp1997 c 4 art 3 s 19; 1998 c 397 art 11 s 3; 1998 c 398 art 3 s 9,10

268.666 WORKFORCE SERVICE AREAS.

Subdivision 1. **Designation of workforce service areas.** For the purpose of administering federal, state, and local employment and training services, the commissioner shall designate the geographic boundaries for workforce service areas in Minnesota.

The commissioner shall approve a request to be a workforce service area from:

(1) a home rule charter or statutory city with a population of 200,000 or more or a county with a population of 200,000 or more; or

(2) a consortium of contiguous home rule charter or statutory cities or counties with an aggregate population of 200,000 or more that serves a substantial part of one or more labor markets.

The commissioner may approve a request to be a workforce service area from a home rule charter or statutory city or a county or a consortium of contiguous home rule charter or statutory cities or counties, without regard to population, that serves a substantial portion of a labor market area.

The commissioner shall make a final designation of workforce service areas within the state after consulting with local elected officials and the governor's workforce development council. Existing service delivery areas designated under the federal Job Training Partnership Act shall be initially designated as workforce service areas providing that no other petitions are submitted by local elected officials.

The commissioner may redesignate workforce service areas no more frequently than every two years. These redesignations must be made not later than four months before the beginning of a program year.

Subd. 2. **Creation of local workforce councils.** A local workforce council must be established in each workforce service area, designated according to subdivision 1.

Subd. 3. **Membership on local workforce councils.** In workforce service areas representing only one home rule charter or statutory city or a county, the chief elected official must appoint members to the council. In workforce service areas representing two or more home rule charter or statutory cities or counties, the chief elected officials of the home rule charter or statutory cities or counties must appoint members to the council, in accordance with an agreement entered into by such units of general local government.

A council shall include as members:

(1) representatives of the private sector, who must constitute a majority of the membership of the council and who are owners of business concerns, chief executives or chief operating officers of nongovernmental employers, or other private sector executives who have substantial management or policy responsibility;

(2) at least two representatives of organized labor;

(3) representatives of the area workforce and community-based organizations, who shall constitute not less than 15 percent of the membership of the council; and

(4) representatives of each of the following:

(i) educational agencies that are representative of all educational agencies within the workforce service area;

(ii) vocational rehabilitation agencies;

(iii) public assistance agencies;

(iv) economic development agencies; and

(v) public employment service agencies.

The chair of each local workforce council shall be selected from among the members of the council who are representatives of the private sector.

Private sector representatives on the local workforce council shall be selected from among individuals nominated by general purpose business organizations, such as local chambers of commerce, in the workforce service area.

Education representatives on the local workforce council shall be selected from among individuals nominated by secondary and post-secondary educational institutions within the workforce service area.

Organized labor representatives on the local workforce council shall be selected from individuals recommended by recognized state and local labor federations, organizations, or

councils. If the state or local labor federations, organizations, or councils fail to nominate a sufficient number of individuals to meet the labor representation requirements, individual workers may be included on the local workforce council to complete the labor representation.

The commissioner must certify a local workforce council if the commissioner determines that its composition and appointments are consistent with this subdivision.

Subd. 4. Purpose; duties of local workforce council. The local workforce council is responsible for providing policy guidance for, and exercising oversight with respect to, activities conducted by local workforce centers in partnership with the local unit or units of general local government within the workforce service area and with the commissioner.

A local workforce center is a location where federal, state, and local employment and training services are provided to job seekers and employers.

A local workforce council, in accordance with an agreement or agreements with the appropriate chief elected official or officials and the commissioner, shall:

(1) determine procedures for the development of the local workforce service area plan. The procedures may provide for the preparation of all or any part of the plan:

- (i) by the council;
- (ii) by any unit of general local or state government in the workforce service area, or by an agency of that unit; or

(iii) by any other methods or institutions as may be provided in the agreement;

(2) select the recipients for local grants and an administrator of the local workforce service area plan. These may be the same entity or separate entities and must be chosen from among the following:

- (i) the council;
- (ii) a unit of general local or state government in its workforce service area, or an agency of that unit;
- (iii) a nonprofit organization or corporation; or
- (iv) any other agreed upon entity;

(3) jointly plan for local collaborative activities including the transition of public assistance recipients to employment in the public or private sectors;

(4) provide on-site review and oversight of program performance;

(5) establish local priorities for service and target populations;

(6) ensure nonduplication of services and a unified service delivery system within the workforce service area; and

(7) nominate individuals to the governor to consider for membership on the governor's workforce development council.

History: 1997 c 118 s 1

268.671 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.6715 1997 MINNESOTA EMPLOYMENT AND ECONOMIC DEVELOPMENT PROGRAM.

The 1997 Minnesota employment and economic development program is established to assist businesses and communities to create jobs that provide the wages, benefits, and on-the-job training opportunities necessary to help low-wage workers and people transitioning from public assistance to get and retain jobs, and to help their families to move out of poverty. Employment obtained under this program is not excluded from the definition of "employment" by section 268.04, subdivision 12, clause (10), paragraph (d).

History: 1997 c 200 art 3 s 1

268.672 DEFINITIONS.

Subdivision 1. Terms. For the purposes of sections 268.672 to 268.682, the following terms have the meanings given them.

Subd. 2. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 3. **Eligible business.** "Eligible business" means a for-profit business.

Subd. 4. [Repealed, 1997 c 200 art 3 s 19]

Subd. 5. **Eligible government agency.** "Eligible government agency" means a county, municipality, school district, or other local governmental subdivision, a state agency, or a federal agency office in Minnesota.

Subd. 6. **Eligible job applicant.** "Eligible job applicant" means a person who:

(1) has attempted to secure a nonsubsidized job by completing comprehensive job readiness and is:

(i) a temporary assistance for needy families (TANF) recipient who is making good faith efforts to comply with the family support agreement as defined under section 256.032, subdivision 7a, but has failed to find suitable employment; or

(ii) a family general assistance recipient;

(2) is a member of a household supported only by:

(i) a low-income worker; or

(ii) a person who is underemployed as that term is defined in section 268.61, subdivision 5; or

(3) is a member of a family that is eligible for, but not receiving public assistance.

Subd. 7. **Eligible nonprofit agency.** "Eligible nonprofit agency" means an organization exempt from taxation under the Internal Revenue Code of 1954, section 501(c)(3), as amended through December 31, 1982.

Subd. 8. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 9. **Household.** "Household" means a group of persons living at the same residence consisting of, at a maximum, spouses and the minor children of each.

Subd. 10. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 11. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 12. [Repealed, 1990 c 568 art 4 s 85]

Subd. 13. **Comprehensive job readiness.** "Comprehensive job readiness" means a job search program administered by a county, its designee, or workforce service area that teaches self-esteem, marketable work habits, job-seeking skills, and life-management skills, and may include job retention services.

Subd. 14. **Eligible program participant.** "Eligible program participant" means an eligible job applicant who is participating in comprehensive job readiness, subsidized employment, or job retention services. An individual who has been dismissed for cause or quit subsidized employment without good cause is not eligible for subsidized employment under the program.

Subd. 15. **Employer.** "Employer" means a private or public employer that:

(1) agrees to create a job that is long term and full time, except a private nonprofit or public employer may provide a temporary job;

(2) pays a wage of at least \$2 per hour higher than the minimum wage; and

(3) agrees to retain a participant at the same wage and benefit level of the wage subsidy period after satisfactory completion of the subsidy period.

Subd. 16. **Full time.** "Full time" means 40 hours of work per week or any other schedule considered full time by the employer. In the case of a temporary assistance to needy families recipient, "full time" means 40 hours comprised of the number of hours of work needed to meet the recipient's work requirement plus the number of hours spent in a training or education program. The employer is required to pay and is eligible to receive the subsidy only for hours worked by the participant for the employer.

Subd. 17. **Job retention services.** "Job retention services" means assistance that would not otherwise be provided to an eligible job applicant with child care, transportation, job coaching, employer-employee mediation, and other forms of support services to help an applicant to transition to employment and retain a job.

Subd. 18. **Low-income worker.** "Low-income worker" means a worker who earns no more than \$1 per hour more than the minimum wage.

Subd. 19. **Minimum wage.** "Minimum wage" means the greater of (1) the federal minimum wage in effect on or after September 1, 1997, and (2) the state minimum wage under section 177.24.

Subd. 20. **Program.** "Program" means the 1997 Minnesota employment and economic development program.

Subd. 21. **Workforce service area.** "Workforce service area" means a service delivery area designated by the governor under the Job Training Partnership Act, United States Code, title 29, section 1501, et seq.

History: 1983 c 312 art 7 s 2; 1984 c 654 art 5 s 43; 1Sp1985 c 9 art 2 s 78,79,105; 1Sp1985 c 14 art 9 s 48,49; 1987 c 384 art 2 s 1; 1991 c 199 art 2 s 1; 1994 c 488 s 8; 1997 c 200 art 3 s 2-11

268.673 EMERGENCY JOBS PROGRAM; COMMISSIONER'S DUTIES.

Subdivision 1. [Repealed, 1Sp1985 c 14 art 9 s 78, subd 2]

Subd. 2. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 3. **Department of economic security.** The commissioner shall supervise wage subsidies, comprehensive job readiness, and job retention services and shall provide technical assistance to counties in their delivery.

Subd. 4. **Enforcement.** (a) The commissioner shall ensure compliance with sections 268.672 to 268.682.

(b) The commissioner may:

(1) make public or private investigations within or without this state necessary to determine whether any person has violated or is about to violate sections 268.672 to 268.682, a contract entered into under them, or any rule or order adopted under them, or to aid in the enforcement of sections 268.672 to 268.682 or in rules and forms adopted under them;

(2) require or permit any person to file a written statement under oath or otherwise, as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated; and

(3) hold hearings, upon reasonable notice, on any matter arising out of the administration of sections 268.672 to 268.682.

(c) The attorney general shall assign one or more assistant attorneys general to the commissioner and shall conduct all proceedings involving the violation of sections 268.672 to 268.682 and all other enforcement proceedings.

(d) Whenever it appears to the commissioner that any person has violated a provision of sections 268.672 to 268.682, a contract entered into under them, or a rule or order adopted under them:

(1) The commissioner may issue and cause to be served upon the person an order requiring the person to cease and desist from the violation. The order must be calculated to give reasonable notice of the right of the person to request a hearing on it and must state the reasons for the entry of the order. A hearing must be held not later than seven days after a request for the hearing is received by the commissioner, after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. If no hearing is requested within 30 days of service of the order, the order becomes final and remains in effect until it is modified or vacated by the commissioner. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, the person shall be deemed in default, and the proceeding may be determined upon consideration of the cease and desist order, the allegations of which may be deemed to be true;

(2) The commissioner may bring an action in the district court of the appropriate county to enjoin the violation and to enforce compliance with the provisions of sections 268.672 to 268.682, a contract entered into under them, or any rule or order adopted under them, and the commissioner may refer the matter to the attorney general. Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted. The court may not require the commissioner to post a bond.

Any injunction proceeding under the provisions of sections 268.672 to 268.682 may be brought on for hearing and disposition upon an order to show cause returnable upon not more

than eight days' notice to the defendant. The case has precedence over other cases upon the court calendar and may not be continued without the consent of the state, except upon good cause shown to the court, and then only for a reasonable length of time necessary in the opinion of the court to protect the rights of the defendant.

Subd. 4a. Contracts with counties. The commissioner shall contract directly with counties, their designees, or workforce service areas to deliver wage subsidies, comprehensive job readiness, and job retention services if (1) each county served by the designee or workforce service area agrees to the contract and knows the amount of wage subsidy money, comprehensive job readiness money, and job retention services money allocated to the county under section 268.6751, and (2) the designee or workforce service area agrees to meet regularly with each county being served. The contracts must require that no more than ten percent of the contract amount be expended for administration.

Counties and workforce service areas are encouraged to designate community-based providers of comprehensive job readiness and job retention services.

Subd. 5. Report. Each county delivering wage subsidies, comprehensive job readiness, and job retention services shall report to the commissioner on a quarterly basis:

(1) the number of persons placed in private sector jobs, in temporary public sector jobs, or in other services;

(2) the outcome for each participant placed;

(3) the number and type of employers employing persons under the program;

(4) the amount of money spent in each county for wages, comprehensive job readiness, and job retention services for each type of employment and each type of other expense;

(5) the age, educational experience, family status, gender, priority group status, race, and work experience of each person in the program;

(6) the amount of wages received by persons while in the program and 60 days after completing the program; and

(7) for each classification of persons described in clause (5), the outcome of the wage subsidy placement, the comprehensive job readiness, and the job retention services, including length of time employed; nature of employment, whether private sector, temporary public sector, or other service; and the hourly wages.

Data collected on individuals under this subdivision are private data on individuals as defined in section 13.02, subdivision 12, except that summary data may be provided under section 13.05, subdivision 7.

Subd. 6. [Repealed, 1997 c 200 art 3 s 19]

History: 1983 c 312 art 7 s 3; 1984 c 654 art 5 s 44; 1Sp1985 c 9 art 2 s 80,103,105; 1Sp1985 c 14 art 9 s 50-53; 1986 c 444; 1987 c 403 art 2 s 134,135; 1990 c 568 art 4 s 62,63; 1994 c 483 s 1; 1997 c 200 art 3 s 12-14

268.674 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

268.675 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

268.6751 ALLOCATION OF WAGE SUBSIDY MONEY.

Subdivision 1. Allocation. Wage subsidy money, comprehensive job readiness money, and job retention services money must be allocated to counties in proportion to the number of persons living at or below the federal poverty threshold in each county. By December 31 of each fiscal year, counties, designees, and workforce service areas receiving wage subsidy money, comprehensive job readiness money, and job retention services money shall report to the commissioner on the use of allocated funds. The commissioner shall reallocate uncommitted funds for each fiscal year according to the formula in this subdivision.

Subd. 2. Emergency wage subsidies. (a) The commissioner shall monitor local and statewide unemployment rates. Upon determining that an economic emergency exists in one or more local service units, the commissioner may implement an emergency wage subsidy program and recommend to the governor to pursue ways to increase the wage subsidy money available to local service units in the affected area or areas from sources other than the appropriation allocated under subdivision 1.

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(b) When the unemployment rate for the state of Minnesota equals or exceeds nine percent, the commissioner shall implement a statewide emergency wage subsidy program and shall recommend to the governor to pursue ways to increase money available for wage subsidies.

History: *1Sp1985 c 14 art 9 s 54; 1987 c 403 art 2 s 136; 1990 c 568 art 4 s 64; 1997 c 200 art 3 s 15*

NOTE: Subdivision 1 was also amended by Laws 1997, chapter 85, article 4, section 28, to read as follows:

"Subdivision 1. **Wage subsidies.** Wage subsidy money must be allocated to local service units in the following manner:

(a) The commissioner shall allocate 87.5 percent of the funds available for allocation to local service units for wage subsidy programs as follows: the proportion of the wage subsidy money available to each local service unit must be based on the number of unemployed persons in the local service unit for the most recent six-month period and the number of aid to families with dependent children and Minnesota family investment program—statewide cases in the local service unit for the most recent six-month period.

(b) Five percent of the money available for wage subsidy programs must be allocated at the discretion of the commissioner.

(c) Seven and one-half percent of the money available for wage subsidy programs must be allocated at the discretion of the commissioner to provide jobs for residents of federally recognized Indian reservations.

(d) By December 31 of each fiscal year, providers and local service units receiving wage subsidy money shall report to the commissioner on the use of allocated funds. The commissioner shall reallocate uncommitted funds for each fiscal year according to the formula in paragraph (a)."

268.676 [Repealed, 1997 c 200 art 3 s 19]

NOTE: Subdivision 1 was also amended by Laws 1997, chapter 85, article 4, section 29, to read as follows:

"Subdivision 1. **Among job applicants.** At least 80 percent of funds allocated among eligible job applicants statewide must be allocated to:

- (1) applicants living in households with no other income source;
- (2) applicants whose incomes and resources are less than the standards for eligibility for general assistance;
- (3) applicants who are eligible for aid to families with dependent children or Minnesota family investment program—statewide; and
- (4) applicants who live in a farm household who demonstrate severe household financial need."

268.677 USE OF FUNDS.

Subdivision 1. **Wage subsidy, comprehensive job readiness, and job retention services money.** To the extent allowable under federal and state law, wage subsidy money, comprehensive job readiness money, and job retention services money must be pooled and used in combination with money from other employment and training services or income maintenance and support services.

(a) The wage subsidy is \$2.50 per hour for wages and up to \$1 per hour for reimbursement of employer-paid benefits for health care, child care, or transportation expenses for employers paying an eligible program participant an hourly wage that is \$2 to \$2.99 per hour higher than the minimum wage.

(b) The wage subsidy is \$4 per hour for wages and up to \$1 per hour for reimbursement of employer paid benefits for health care, child care, or transportation expenses for employers paying an eligible program participant an hourly wage that is \$3 or more per hour higher than the minimum wage.

(c) The wage subsidy for an eligible job applicant may be paid for a maximum of 1,040 hours over a period of 26 weeks. Employers are encouraged to use money from other sources to provide increased wages to applicants they employ. Job retention services may be provided to an eligible program participant over a period of 78 weeks.

(d) An employer of more than four full-time employees shall receive wage subsidies for no more than 25 percent of the employer's full-time workforce.

Subd. 2. [Repealed, 1997 c 200 art 3 s 19]

Subd. 3. [Repealed, 1997 c 200 art 3 s 19]

History: *1983 c 312 art 7 s 7; 1984 c 654 art 5 s 48; 1Sp1985 c 9 art 2 s 85,105; 1Sp1985 c 14 art 9 s 56; 1987 c 403 art 2 s 138; 1990 c 568 art 4 s 66,67; 1990 c 594 art 3 s 10; 1997 c 200 art 3 s 16*

268.678 [Repealed, 1997 c 200 art 3 s 19]

268.679 Subdivision 1. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 2. [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

Subd. 3. [Repealed, 1997 c 200 art 3 s 19]

268.68 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

268.681 BUSINESS EMPLOYMENT.

Subdivision 1. **Eligible businesses.** A business employer is an eligible employer if it enters into a written contract, signed and subscribed to under oath, with a county or its designee, containing assurances that:

(a) funds received by a business shall be used only as permitted under sections 268.672 to 268.682;

(b) the business has submitted information to the county, its designee, or workforce service area (1) describing the duties and proposed compensation of each employee proposed to be hired under the program; and (2) demonstrating that, with the funds provided under sections 268.672 to 268.682, the business is likely to succeed and continue to employ persons hired using wage subsidies;

(c) the business will use funds exclusively for compensation and benefits of eligible job applicants and will provide employees hired with these funds with benefits and other terms and conditions of employment comparable to those provided to other employees of the business who do comparable work;

(d) the funds are necessary to allow the business to begin, expand, or to fill other open positions but not to fill positions which would be filled in the absence of wage subsidies;

(e) the business will cooperate with the county and the commissioner in collecting data to assess the result of wage subsidies and the effectiveness of comprehensive job readiness and job retention services; and

(f) the business is in compliance with all applicable affirmative action, fair labor, health, safety, and environmental standards.

Subd. 1a. **Ineligible businesses.** A business employer is ineligible to participate in the program and is ineligible to receive wage subsidy money if:

(1) the business is a temporary employment agency; or

(2) the business is a restaurant.

For purposes of this subdivision, "temporary employment agency" means a business that hires people to work in temporary positions for employers who are clients of that business.

For purposes of this subdivision, "restaurant" includes, but is not limited to, fast food restaurants.

Subd. 1b. **Discharge of program participant.** A program participant discharged from employment may challenge the discharge as a violation of subdivision 1.

Subd. 2. **Priorities.** (a) In allocating funds among eligible businesses, the county or its designee shall give priority to:

(1) businesses that will provide applicants with on-the-job training and marketable job skills;

(2) businesses engaged in manufacturing;

(3) nonretail businesses that are small businesses as defined in section 645.445; and

(4) businesses that export products outside the state.

(b) In addition to paragraph (a), a county must give priority to businesses that:

(1) have a high potential for growth and long-term job creation;

(2) are labor intensive;

(3) make high use of local and Minnesota resources;

(4) are under ownership of women and minorities;

(5) make high use of new technology;

(6) produce energy conserving materials or services or are involved in development of renewable sources of energy; and

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(7) have their primary place of business in Minnesota.

Subd. 3. Payback. (a) A business receiving wage subsidies shall repay 70 percent of the amount initially received for each eligible job applicant employed, if the employee does not continue in the employment of the business beyond the six-month subsidized period. If the employee continues in the employment of the business for one year or longer after the six-month subsidized period, the business need not repay any of the funds received for that employee's wages. If the employee continues in the employment of the business for a period of less than one year after the expiration of the six-month subsidized period, the business shall receive a proportional reduction in the amount it must repay.

(b) If an employer dismisses an employee for good cause and works in good faith with the local service unit or its contractor to employ and train another person referred by the county, its designee, or workforce service area, the payback formula shall apply as if the original person had continued in employment.

(c) If a business receiving funds under the program reduces the hourly wage after the six-month subsidy, the business must repay a portion of the subsidy in direct proportion to the amount that the hourly wage is reduced.

(d) A repayment schedule shall be negotiated and agreed to by the county and the business prior to the disbursement of the funds and is subject to renegotiation. The county shall retain payments received under this subdivision for any administrative costs associated with the collection of the funds under this subdivision and for entering into new wage subsidy agreements.

(e) If an employer is more than 60 days late in repaying a subsidy as required in this subdivision, the county may engage a licensed collection agency or refer the matter to the department for collection under chapter 16D.

Subd. 4. [Repealed, 1990 c 594 art 3 s 15]

Subd. 4. Successorship. A contract entered into by an owner, employer, or manager under the wage subsidy program is legally binding on any successor owner, employer, or manager.

History: 1983 c 312 art 7 s 11; 1Sp1985 c 14 art 9 s 63; 1987 c 403 art 2 s 141,142; 1990 c 568 art 4 s 69-71; 1990 c 594 art 3 s 11; 1997 c 200 art 3 s 17.

268.681 FUND COMBINATIONS.

To the extent allowable under federal law, money for job training under Title II-A of the Job Training Partnership Act, United States Code, title 29, section 1501 et seq., and money from other employment and training services or income maintenance and support services, except services administered under chapter 116L, may be pooled and used in combination with money to provide subsidized employment, comprehensive job readiness and job retention services under sections 268.6715 to 268.682.

History: 1997 c 200 art 3 s 18

268.682 WORKER DISPLACEMENT PROHIBITED.

Subdivision 1. Layoffs; work reductions. An eligible employer may not terminate, lay off, or reduce the working hours of an employee for the purpose of hiring an individual with funds available under sections 268.672 to 268.682.

Subd. 2. Hiring during layoffs. An eligible employer may not hire an individual with funds available under sections 268.672 to 268.682 if any other person is on layoff from the same or a substantially equivalent job.

Subd. 3. Employer certification. In order to qualify as an eligible employer, a government or nonprofit agency or business must certify to the eligible local service unit that each job created and funded under sections 268.672 to 268.682:

(a) will result in an increase in employment opportunities over those which would otherwise be available;

(b) will not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or employment benefits; and

(c) will not impair existing contracts for service or result in the substitution of wage subsidy funds for other funds in connection with work that would otherwise be performed.

History: 1983 c 312 art 7 s 12; 1Sp1985 c 14 art 9 s 64

268.683 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

268.684 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 2]

268.685 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.686 [Repealed, 1Sp1985 c 9 art 2 s 104; 1Sp1985 c 14 art 9 s 78 subd 2]

268.80 [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]

268.81 [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]

268.82 [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]

268.83 [Repealed, 1983 c 312 art 8 s 18; 1Sp1985 c 14 art 9 s 78 subd 1]

268.84 [Repealed, 1Sp1985 c 14 art 9 s 78 subd 1]

268.85 SERVICE PRIORITIES.

Subdivision 1. **Groups with severe disadvantages.** To the extent that the state has the authority to establish priority groups to be served through employment and training services, greatest consideration must be given to client groups identified as experiencing the most severe disadvantages to employment. Individuals volunteering for employment, regardless of whether they are required to register, must also be given preference to avoid the effects of long-term unemployment or dependence on public assistance.

Subd. 2. **Order of priority.** (a) The priority for services to be provided is:

(1) permanent, unsubsidized, full-time private or nonprofit sector employment and, where possible, in conjunction with targeted jobs tax credits as defined at United States Code, title 26, section 44B, as amended by Public Law Number 98-369, with highest priority to employment with paid medical benefits;

(2) permanent, subsidized, full-time private sector employment;

(3) permanent, subsidized, full-time nonprofit sector employment;

(4) training;

(5) relocation, except that relocation is considered only when a client can find affordable housing near the new location; and

(6) part-time, subsidized, nonprofit, or public employment with continued employment assistance.

(b) Individuals receiving any of the priority services in paragraph (a) must be provided with child care, transportation, or other support services as necessary and in relation to their eligibility and the availability of funds.

(c) In delivering employment and training services, local service units shall distribute their available resources in a manner that provides greater incentives to clients in permanent private or nonprofit sector employment than in public sector jobs.

History: 1Sp1985 c 14 art 9 s 65; 1987 c 403 art 3 s 51

268.86 EMPLOYMENT AND TRAINING PROGRAMS.

Subdivision 1. [Repealed, 1987 c 403 art 3 s 98]

Subd. 2. **Interagency agreements.** By October 1, 1987, the commissioner and the commissioner of human services shall enter into a written contract for the design, delivery, and administration of employment and training services for applicants for or recipients of food stamps, aid to families with dependent children or Minnesota family investment program-statewide, including AFDC and MFIP-S employment and training programs and general assistance. The contract must address:

(1) specific roles and responsibilities of each department;

(2) assignment and supervision of staff for interagency activities including any necessary interagency employee mobility agreements under the administrative procedures of the department of employee relations;

(3) mechanisms for determining the conditions under which individuals participate in services, their rights and responsibilities while participating, and the standards by which the services must be administered;

(4) procedures for providing technical assistance to local service units, Indian tribes, and employment and training service providers;

(5) access to appropriate staff for ongoing development and interpretation of policy, rules, and program standards;

(6) procedures for reimbursing appropriate agencies for administrative expenses; and

(7) procedures for accessing available federal funds.

Subd. 3. [Repealed, 1987 c 403 art 3 s 98]

Subd. 4. [Repealed, 1987 c 403 art 3 s 98]

Subd. 5. [Repealed, 1987 c 403 art 3 s 98]

Subd. 6. **Coordination.** In developing employment and training services, the commissioner shall identify and incorporate, to the extent possible, money from both federal and state income maintenance, employment and training, and educational programs.

Subd. 7. [Repealed, 1989 c 282 art 5 s 133]

Subd. 8. **Grant diversion.** The commissioner shall develop grant diversion processes for recipients of general assistance and work readiness assistance payments and shall supervise the counties in the administration of the employment and training services to meet the needs and circumstances of these recipients. A grant diversion program that places general assistance and work readiness recipients in public sector employment must operate as a community investment program under section 268.90.

Subd. 9. [Repealed, 1990 c 568 art 4 s 85]

Subd. 10. **Inventory, referral, and intake services.** The commissioner of economic security, in cooperation with the commissioner of human services, shall develop an inventory, referral, and intake system. The system must provide for coordinated delivery of employment and training and income maintenance support services, efficient client referral among programs and services, reduction of duplicate data collection, coordinated program intake by local agencies, and effective evaluation of employment and training services. The system must, at a minimum, include the following:

(1) a listing of all available public and private employment and training services, income maintenance and support services, and vocationally directed education and training programs;

(2) the capability to assess client needs and match those needs with employment opportunities, education and training programs, and employment and training and income maintenance and support services, and to refer the client to the appropriate employer, educational institution, or service provider;

(3) a coordinated intake procedure for employment and training services, and income maintenance and support services;

(4) access to a statewide database for client tracking and program evaluation; and

(5) internal security measures to protect private data from unauthorized access.

In developing the system, the commissioner shall consult with the public post-secondary educational systems, local agencies, employment and training service providers, and client and employer representatives. The system must be available in each local agency or service provider delivering programs administered by the commissioner of economic security or the commissioner of human services. Access by intake workers, state agency personnel, clients, and any other system users to information contained in the system must conform with all applicable federal and state data privacy requirements.

History: 1Sp1985 c 14 art 9 s 66; 1987 c 403 art 3 s 53; 1988 c 689 art 2 s 222; 1989 c 282 art 5 s 125; 1990 c 568 art 4 s 72,73; 1994 c 483 s 1; 1997 c 85 art 4 s 30

268.871 LOCAL DELIVERY.

Subdivision 1. **Responsibility and certification.** (a) Unless prohibited by federal law or otherwise determined by state law, a local service unit is responsible for the delivery of employment and training services. After February 1, 1988, employment and training services must be delivered by certified employment and training service providers.

(b) The local service unit's employment and training service provider must meet the certification standards in this subdivision in order to be certified to deliver any of the following employment and training services and programs: wage subsidies; general assistance grant diversion; food stamp employment and training programs; community work experience programs; AFDC or MFIP-S job search; AFDC or MFIP-S grant diversion; AFDC or MFIP-S on-the-job training; and AFDC or MFIP-S case management.

(c) The commissioner shall certify a local service unit's service provider to provide these employment and training services and programs if the commissioner determines that the provider has:

- (1) past experience in direct delivery of the programs specified in paragraph (b);
- (2) staff capabilities and qualifications, including adequate staff to provide timely and effective services to clients, and proven staff experience in providing specific services such as assessments, career planning, job development, job placement, support services, and knowledge of community services and educational resources;
- (3) demonstrated effectiveness in providing services to public assistance recipients and other economically disadvantaged clients; and
- (4) demonstrated administrative capabilities, including adequate fiscal and accounting procedures, financial management systems, participant data systems, and record retention procedures.

(d) When the only service provider that meets the criterion in paragraph (c), clause (1), has been decertified, according to subdivision 1a, in that local service unit, the following criteria shall be substituted: past experience in direct delivery of multiple, coordinated, nonduplicative services, including outreach, assessments, identification of client barriers, employability development plans, and provision or referral to support services.

(e) The commissioner shall certify providers of the Minnesota family investment plan case management services as defined in section 256.032, subdivision 3. Providers must meet the standards defined in paragraph (c), except that past experience under paragraph (c), clause (1), must be in services and programs similar to those specified in section 256.032, subdivision 3.

Employment and training service providers shall be certified by the commissioner for two fiscal years beginning July 1, 1991, and every second year thereafter.

Subd. 1a. **Decertification.** (a) The department, on its own initiative, or at the request of the local service unit, shall begin decertification processes for employment and training service providers who:

- (1) no longer meet one or more of the certification standards;
- (2) are delivering services in a manner that does not comply with the Family Support Act of 1988, Public Law Number 100-485 or relevant state law after corrective actions have been cited, technical assistance has been provided, and a reasonable period of time for remedial action has been provided; or
- (3) are not complying with other state and federal laws or policy which are necessary for effective delivery of services.

(b) The initiating of decertification processes shall not result in decertification of the service provider unless and until adequate fact-finding and investigation has been performed by the department.

Subd. 2. **Contracting responsibility.** A local service unit must contract with certified employment and training service providers that can effectively coordinate federal, state, and local employment and training services; that can maximize use of available federal and other nonstate funds; and that have demonstrated the ability to achieve effective results in serving public assistance clients as well as other unemployed people.

Subd. 3. **Enforcement.** The local service units shall provide for the enforcement of employment and training requirements for appropriate recipients of public assistance, and must include provisions for enforcing the requirements in any contracts with providers under subdivisions 1 and 2.

Subd. 4. **Location of staff.** (a) In establishing a contract, the county shall agree to collocate, where feasible, income maintenance and social service staff as necessary to accept applications and determine eligibility, monitor ongoing client eligibility, and authorize services and grants available under programs administered by the county or local service unit that are related to employment and training or the client's successful participation in employment and training activities.

(b) The commissioner shall collocate, where feasible, sufficient staff to make the services provided through the department of economic security and the programs it administers or supervises available to clients being served by the local service unit or the contract agency.

(c) The commissioner has emergency and permanent rulemaking authority to implement this section and shall establish the circumstances under which the requirements for collocation may be waived.

Subd. 5. **Reports.** Each employment and training service provider under contract with a local service unit or an Indian tribe to deliver employment and training services must submit an annual report by March 1 to the local service unit or the Indian tribe. The report must specify:

- (1) the types of services provided;
- (2) the number of priority and nonpriority AFDC recipients served, the number of work readiness assistance recipients served, and the number of other clients served;
- (3) how resources will be prioritized to serve priority and nonpriority public assistance recipients and other clients; and
- (4) the manner in which state employment and training funds and programs are being coordinated with federal and local employment and training funds and programs.

History: *1Sp1985 c 9 art 2 s 103; 1Sp1985 c 14 art 9 s 67; 1987 c 403 art 3 s 55-57; 1987 c 403 art 2 s 143; 1989 c 282 art 5 s 126; 1990 c 568 art 4 s 74-76; 1993 c 306 s 17; 1994 c 483 s 1; 1997 c 85 art 4 s 31*

268.872 STATE FUNDING OF EMPLOYMENT AND TRAINING PROGRAMS.

Subdivision 1. **Available money.** The commissioner and local service units are not required to provide employment and training services that exceed the levels permitted by available federal, state, and local funds subject to the requirements or limitations of each program.

Subd. 2. **Maintenance of effort.** A local service unit shall certify to the commissioner that it has not reduced funds from other federal, state, and county sources which would, in the absence of this section, have been available for employment and training services and child care services and related administrative costs.

Subd. 3. [Repealed, 1990 c 568 art 4 s 85]

History: *1Sp1985 c 14 art 9 s 68*

268.88 LOCAL SERVICE UNIT PLANS.

(a) By April 15, 1999, and by April 15 of each second year thereafter, local service units shall prepare and submit to the commissioner a plan that covers the next two state fiscal years. At least 30 days prior to submission of the plan, the local service unit shall solicit comments from the public on the contents of the proposed plan. The commissioner shall notify each local service unit within 60 days of receipt of its plan that the plan has been approved or disapproved. The plan must include:

- (1) a statement of objectives for the employment and training services the local service unit administers;
- (2) the establishment of job placement and job retention goals, the establishment of public assistance caseload reduction goals, and the strategies and programs that will be used to achieve these goals;

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(3) a statement of whether the goals from the preceding year were met and an explanation if the local service unit failed to meet the goals;

(4) the amount proposed to be allocated to each employment and training service;

(5) the proposed types of employment and training services the local service unit plans to utilize;

(6) a description of how the local service unit will use funds provided under chapter 256J to meet the requirements of that chapter. The description must include what services will be provided, per service expenditures, an estimate of how many employment and training slots the local service unit will provide, how many dollars the local service unit will provide per slot per provider, how many participants per slot, an estimate of the ratio of participants per job counselor, and proposed uses for any residual funds not included in slot allocations to providers;

(7) a report on the use of wage subsidies, grant diversions, community investment programs, and other services administered under this chapter;

(8) a performance review of the employment and training service providers delivering employment and training services for the local service unit;

(9) a copy of any contract between the local service unit and an employment and training service provider including expected outcomes and service levels for public assistance clients;

(10) a copy of any other agreements between educational institutions, family support services, and child care providers; and

(11) a description of how the local service unit ensures compliance with section 256J.06, requiring community involvement in the administration of MFIP-S.

(b) In counties with a city of the first class, the county and the city shall develop and submit a joint plan. The plan may not be submitted until agreed to by both the city and the county. The plan must provide for the direct allocation of employment and training money to the city and the county unless waived by either. If the county and the city cannot concur on a plan, the commissioner shall resolve their dispute. In counties in which a federally recognized Indian tribe is operating an employment and training program under an agreement with the commissioner of human services, the plan must provide that the county will coordinate its employment and training programs, including developing a system for referrals, sanctions, and the provision of supporting services such as access to child care funds and transportation with programs operated by the Indian tribe. The plan may not be given final approval by the commissioner until the tribal unit and county have submitted written agreement on these provisions in the plan. If the county and Indian tribe cannot agree on these provisions, the local service unit shall notify the commissioner of economic security and the commissioners of economic security and human services shall resolve the dispute.

(c) The commissioner may withhold the distribution of employment and training money from a local service unit that does not submit a plan to the commissioner by the date set by this section, and shall withhold the distribution of employment and training money from a local service unit whose plan has been disapproved by the commissioner until an acceptable amended plan has been submitted.

(d) Beginning April 15, 1992, and by April 15 of each second year thereafter, local service units must prepare and submit to the commissioner an interim year plan update that deals with performance in that state fiscal year and changes anticipated for the second year of the biennium. The update must include information about employment and training programs addressed in the local service unit's two-year plan and shall be completed in accordance with criteria established by the commissioner.

History: *ISp1985 c 14 art 9 s 69; 1987 c 403 art 2 s 144; art 3 s 58; 1989 c 282 art 5 s 127; 1990 c 568 art 4 s 77; 1994 c 483 s 1; 1998 c 407 art 6 s 110*

268.881 INDIAN TRIBE PLANS.

(a) The commissioner, in consultation with the commissioner of human services, shall review and comment on Indian tribe plans submitted to the commissioner for provision of employment and training services. Beginning April 15, 1991, and by April 15 of each second

year thereafter, the Indian tribe shall prepare and submit to the commissioner a plan that covers the next two state fiscal years. Beginning April 15, 1992, and by April 15 of each second year thereafter, the Indian tribe shall prepare and submit to the commissioner an interim year plan update that deals with performance during the past state fiscal year and that covers changes anticipated for the second year of the biennium. The commissioner shall notify the Indian tribe of approval or disapproval of the plans and updates for existing programs within 60 days of submission.

(b) A plan for a new tribal program must be submitted at least 45 days before the program is to commence. The commissioner shall approve or disapprove the plan for new programs within 30 days of receipt.

(c) The tribal plan and update must contain information that has been established by the commissioner and the commissioner of human services for the tribal employment and training service program.

(d) The commissioner may recommend to the commissioner of human services withholding the distribution of employment and training money from a tribe whose plan or update is disapproved by the commissioner or a tribe that does not submit a plan or update by the date established in this section.

History: 1989 c 282 art 5 s 128; 1990 c 568 art 4 s 78

268.89 JOBS TRAINING PARTNERSHIP ACT; ADMINISTRATION.

Subdivision 1. **Coordination of state and federal programs.** The commissioner shall act as the governor's agent in administering the federal Jobs Training Partnership Act. To the extent permitted under federal regulation, this program must be administered in conjunction with a comprehensive state employment and training strategy and its resources used in coordination with state programs and to further state objectives.

Subd. 2. **Biennial plan.** The commissioner shall recommend to the governor the priorities, performance standards, and special projects.

Subd. 3. **Other plans.** Strong consideration for income maintenance recipients must be included in the goals, objectives, and criteria of the governor's coordination and special services plan under section 121 of the Jobs Training Partnership Act, United States Code, title 29, section 1531. Local service delivery area plans and job service plans must describe methods of complying with the coordination criteria under the governor's coordination and special services plan as required under United States Code, title 29, sections 49g and 1514.

History: 1Sp1985 c 14 art 9 s 70; 1987 c 403 art 2 s 145

268.90 COMMUNITY INVESTMENT PROGRAMS.

Subdivision 1. **Purpose; requirements.** Community investment programs provide temporary employment to people who are experiencing prolonged unemployment and economic hardship. Community investment programs consist of one or more projects. Community investment programs must be beneficial to the state and the communities in which they are located and must provide program participants with training and work experience that will enhance their employability. The projects must include activities that:

- (1) expand or improve services, including education, health, social services, recreation, and safety;
- (2) improve or maintain natural resources, including rivers, streams and lakes, forest lands and roads, and soil conservation;
- (3) make permanent improvements to lands and buildings; or
- (4) weatherize public buildings and private residential dwellings.

Community investment programs may not include job placements that replace work that was part or all of the duties or responsibilities of an authorized public employee position established as of January 1, 1985.

Community investment programs that include other sources of money or authorized programs may provide employment for the groups eligible for the included programs under the terms and conditions of those programs. These programs include the Minnesota con-

ervation corps, Minnesota summer youth program, county emergency jobs program, and the jobs training partnership act.

Subd. 2. Employment conditions. (a) An eligible nonprofit or public employer may not terminate, lay off, or reduce the regular working hours of an employee for the purpose of hiring an individual with money available under this program. An eligible employer may not hire an individual with money available through this program if any other person is on layoff from the same or a substantially equivalent job.

(b) Community investment program participants are employees of the project employer within the meaning of workers' compensation laws, personal income tax, and the Federal Insurance Contribution Act, but not retirement or civil service laws.

(c) Each project and job must comply with all applicable affirmative action, fair labor, health, safety, and environmental standards.

(d) Individuals employed under the community investment program must be paid a wage at the same wage rates as work site or employees doing comparable work in that locality, unless otherwise specified in law.

(e) Recipients of aid to families with dependent children or Minnesota family investment program—statewide who are eligible on the basis of an unemployed parent may not have available more than 100 hours a month. All employees are limited to 32 hours or four days a week, so that they can continue to seek full-time private sector employment, unless otherwise specified in law.

(f) The commissioner shall establish, by rule, the terms and conditions governing the participation of appropriate public assistance recipients. The rules must, at a minimum, establish the procedures by which the minimum and maximum number of work hours and maximum allowable travel distances are determined, the amounts and methods by which work expenses will be paid, and the manner in which support services will be provided. The rules must also provide for periodic reviews of clients continuing employment in community investment programs.

(g) Participation in a community investment program by a recipient of aid to families with dependent children, Minnesota family investment program—statewide, or general assistance is voluntary.

Subd. 3. Commissioner of economic security. The commissioner shall:

(1) make rules governing plan content, criteria for approval, and administrative standards;

(2) refer community investment program administrators to the appropriate state agency for technical assistance in developing and administering community investment programs;

(3) establish the method by which community investment programs will be approved or disapproved through the community investment program plan and the annual update component of the county plan;

(4) review and comment on community investment program plans;

(5) institute ongoing methods to monitor and evaluate community investment programs; and

(6) consult with the commissioner of human services on the approval of county plans for community investment programs relating to the participation of public assistance recipients.

Subd. 4. County boards of commissioners. The county boards of commissioners shall:

(1) be encouraged to establish community investment programs that are administered jointly according to section 471.59, or through multicounty human service boards under chapter 402;

(2) develop community investment programs in consultation with the exclusive representatives of their employees;

(3) plan community investment programs by involving nonprofit organizations and other governmental units, community action agencies, community-based organizations, local union representatives, and representatives of client groups;

(4) submit to the commissioner a community investment program plan identifying the program funding source and amount, before the initiation of a community investment program, for approval according to standards established by the commissioner;

(5) plan community investment projects that, whenever possible, utilize existing programs that are administered under contract by nonprofit organizations and governmental units, including departments and agencies of cities, counties, towns, school districts, state and federal agencies, park reserve districts, and other special districts;

(6) include in their local service unit plans an annual update to their community investment program plans for approval according to standards established by the commissioner;

(7) submit reports and meet administrative standards established by the commissioner;

(8) monitor the performance of entities under contract to administer individual community investment projects;

(9) enter into contracts with other governmental and private bodies to jointly fund or jointly administer approvable projects when agreements expand the resources available, the scope of people employed, or further recognized public purposes; and

(10) be encouraged to enter into contracts with businesses or individuals for eligible projects under subdivision 1 and charge a fee for the completion of a project.

Subd. 5. State financial participation. The statutorily established state rates of financial participation or available state appropriations or grants are not affected by their incorporation into a community investment program.

History: *1Sp1985 c 14 art 9 s 71; 1990 c 568 art 4 s 79-81; 1994 c 483 s 1; 1997 c 7 art 5 s 35; 1997 c 85 art 4 s 32*

268.91 Subdivision 1. [Renumbered 256H.01]

Subd. 2. [Renumbered 256H.02]

Subd. 3. [Renumbered 256H.03]

Subd. 3a. [Renumbered 256H.04]

Subd. 3b. [Renumbered 256H.05]

Subd. 3c. [Renumbered 256H.06]

Subd. 3d. [Renumbered 256H.07]

Subd. 3e. [Renumbered 256H.08]

Subd. 3f. [Renumbered 256H.09]

Subd. 4. [Renumbered 256H.10]

Subd. 5. [Renumbered 256H.11]

Subd. 6. [Renumbered 256H.12]

Subd. 6a. [Renumbered 256H.13]

Subd. 7. [Renumbered 256H.14]

Subd. 8. [Renumbered 256H.15]

Subd. 9. [Renumbered 256H.16]

Subd. 10. [Renumbered 256H.17]

Subd. 11. [Renumbered 256H.18]

Subd. 12. [Renumbered 256H.19]

268.911 [Renumbered 256H.20]

HEAD START PROGRAM

268.912 [Renumbered 119A.50]

268.913 Subdivision 1. [Renumbered 119A.51 subd 1]

Subd. 2. [Renumbered 119A.51 subd 2]

Subd. 3. [Renumbered 119A.51 subd 3]

Subd. 4. [Renumbered 119A.51 subd 4]

Subd. 5. [Repealed, 1997 c 162 art 1 s 19]

Subd. 6. [Renumbered 119A.51 subd 5]

268.914 Subdivision 1. [Renumbered 119A.52]

Subd. 2. [Repealed, 1993 c 369 s 146]

268.915 [Renumbered 119A.53]

268.916 [Renumbered 119A.54]

268.9165 AUTHORITY TO WAIVE REQUIREMENTS DURING DISASTER PERIODS.

The commissioner of children, families, and learning may waive requirements under sections 119A.50 to 119A.54, for up to nine months after the disaster, for Head Start grantees in areas where a federal disaster has been declared under United States Code, title 42, section 5121, et seq., or the governor has exercised authority under chapter 12. The commissioner shall notify the chairs of the senate family and early childhood education budget division, the senate education finance committee, the house family and early childhood education finance division, the house education committee, and the house ways and means committee ten days before the effective date of any waiver granted under this section.

History: *1Sp1995 c 3 art 16 s 13; 1997 c 203 art 1 s 15; 1Sp1997 c 5 s 46; 1998 c 383 s 37*

268.917 [Repealed, 1998 c 273 s 15]

NOTE: This section was also amended by Laws 1998, chapter 404, section 49, to read as follows:

"268.917 **Early childhood learning and child protection facilities.**

The commissioner may make grants to state agencies and political subdivisions to construct or rehabilitate facilities for Head Start, early childhood and family education programs, other early childhood intervention programs, or demonstration family service centers housing multiagency collaboratives, with priority to centers in counties or municipalities with the highest percentage of children living in poverty. The commissioner may also make grants to state agencies and political subdivisions to construct or rehabilitate facilities for crisis nurseries or child visitation centers. The facilities must be owned by the state or a political subdivision, but may be leased under section 16A.695 to organizations that operate the programs. The commissioner shall prescribe the terms and conditions of the leases. A grant for an individual facility must not exceed \$200,000 for each program that is housed in the facility, up to a maximum of \$500,000 for a facility that houses three programs or more. The commissioner shall give priority to grants that involve collaboration among sponsors of programs under this section and may give priority to projects that collaborate with child care providers, including all-day and school-age child care programs, special needs care, sick child care, and nontraditional hour care. The commissioner may give priority to grants for programs that will increase their child care workers' wages as a result of the grant. At least 25 percent of the amounts appropriated for these grants up to \$50,000 must utilize youthbuild under sections 268.361 to 268.366 or other youth employment and training programs for the labor portion of the construction. Eligible programs must consult with appropriate labor organizations to deliver education and training. State appropriations must be matched on a 50 percent basis with nonstate funds. The matching requirement must apply programwide and not to individual grants."

268.918 HOMELESS YOUTH FACILITIES.

The commissioner may make grants to state agencies and political subdivisions to construct or rehabilitate facilities to provide services to homeless or at-risk youth. The facilities must be owned by the state or a political subdivision, but may be leased under section 16A.695 to organizations that operate the programs. The commissioner shall prescribe the terms and conditions of the leases. The commissioner shall give priority to grants that involve collaboration among sponsors of programs. At least 25 percent of the amounts appropriated for these grants must be used in conjunction with the youth employment and training programs operated by the commissioner. Eligible programs must consult with appropriate labor organizations to deliver education and training.

History: *1996 c 463 s 44*

268.92 [Repealed, 1998 c 273 s 15]

NOTE: Subdivision 4 was also amended by Laws 1998, chapter 407, article 2, section 97, to read as follows:

"Subd. 4. **Lead supervisor or certified firm.** (a) Eligible organizations and lead supervisors or certified firms may participate in the swab team program. An eligible organization receiving a grant under this section must assure that all participating lead supervisors or certified firms are licensed and that all swab team workers are certified by the department of health under section 144.9505. Eligible organizations and lead supervisors or certified firms may distinguish between interior and exterior services in assigning duties and may participate in the program by:

- (1) providing on-the-job training for swab team workers;
- (2) providing swab team services to meet the requirements of sections 144.9503, subdivision 4, and 144.9504, subdivision 6;

- (3) providing a removal and replacement component using skilled craft workers under subdivision 7;
 - (4) providing lead testing according to subdivision 7a;
 - (5) providing lead dust cleaning supplies, as described in section 144.9507, subdivision 4, paragraph (c), to residents; or
 - (6) having a swab team worker instruct residents and property owners on appropriate lead control techniques, including the lead-safe directives developed by the commissioner of health.
- (b) Participating lead supervisors or certified firms must:
- (1) demonstrate proof of workers' compensation and general liability insurance coverage;
 - (2) be knowledgeable about lead abatement requirements established by the Department of Housing and Urban Development and the Occupational Safety and Health Administration and lead hazard reduction requirements and lead-safe directives of the commissioner of health;
 - (3) demonstrate experience with on-the-job training programs;
 - (4) demonstrate an ability to recruit employees from areas at high risk for toxic lead exposure; and
 - (5) demonstrate experience in working with low-income clients."

268.95 INDIVIDUAL ENTERPRISE.

Subdivision 1. **Coordination.** The commissioner may coordinate state activities related to self-employment enterprises, including home-based businesses, individual self-employment initiatives, and collective and cooperative efforts involving individual entrepreneurs.

Subd. 2. **Marketing.** The commissioner may undertake activities to expand the marketing of goods or services produced by the state's independent entrepreneurs.

Subd. 3. **Technical assistance.** The commissioner may provide or arrange for the provision of information, technical assistance, and support as necessary to help individuals determine whether they wish to become self-employed, to obtain needed training, to develop business plans and financing, and to sustain the initiatives.

Subd. 4. **Pilot program.** The commissioner shall develop a pilot program, in cooperation with the commissioners of trade and economic development and human services, to enable low-income persons to start or expand self-employment opportunities or home-based businesses that are designed to make the individual entrepreneurs economically independent. The commissioner of human services shall seek necessary waivers from federal regulations to allow recipients of aid to families with dependent children or Minnesota family investment program—statewide to participate and retain eligibility while establishing a business.

Subd. 5. **Study.** The commissioner shall study the needs of individual entrepreneurs and beginning businesses and recommend to the governor how state programs and resources can provide further assistance.

History: 1Sp1985 c 14 art 9 s 73; 1987 c 312 art 1 s 26 subd 2; 1997 c 85 art 4 s 34

268.96 DISPLACED HOMEMAKER PROGRAMS.

The commissioner of economic security may enter into arrangements with existing private or nonprofit organizations and agencies with experience in dealing with displaced homemakers to provide counseling and training services. The commissioner shall assist displaced homemakers in applying for appropriate welfare programs and shall take welfare allowances received into account in setting the stipend level. Income received as a stipend under these programs shall be totally disregarded for purposes of determining eligibility for and the amount of a general assistance grant.

History: 1973 c 254; 1977 c 428 s 8; 1977 c 430 s 25; 1Sp1985 c 14 art 9 s 75; 1994 c 483 s 1

HOSPITALITY HOST PROGRAM

268.971 HOSPITALITY HOST PROGRAM.

Subdivision 1. **Establishment.** A hospitality host older worker tourism program is established in the department of economic security to assist economically disadvantaged older workers to gain employment in the promotion of the tourism industry in Minnesota and to become self-sufficient. The objectives of the program are to:

- (1) assist in the diversification of industry in rural areas by stimulating and promoting tourism;
- (2) create full-time and part-time employment for low-income persons 55 years old or older;
- (3) raise the income of older persons living in poverty; and
- (4) promote tourism in selected local areas throughout the state, thereby improving local economies.

Subd. 2. Definitions. (a) **Scope.** As used in this section, the terms defined in this section have the meanings given them.

(b) **Commissioner.** "Commissioner" means the commissioner of the department of economic security.

(c) **Older worker.** "Older worker" means an economically disadvantaged person 55 years or older.

(d) **Economically disadvantaged.** "Economically disadvantaged" means a person having an income of 125 percent or less of the federal poverty income guidelines. In determining income, the federal Job Training Partnership Act definition of family and family income will prevail.

(e) **Program.** "Program" means the hospitality host older worker program created in subdivision 1.

(f) **Coordinating agency.** "Coordinating agency" means the Arrowhead economic opportunity agency.

Subd. 3. Distribution and use of state money. Money allocated to the coordinating agency by the commissioner must be used for activities consistent with the objectives of the program including, but not limited to: outreach, selection of eligible participants, program sites, individual work sites, classroom training, on-the-job training opportunities, and program marketing. Program funds shall be used to provide training-related costs to enrollees during orientation and classroom training segments. Program funds shall be used to subsidize up to 50 percent of enrollee wages during contracted on-the-job training periods with the employer being responsible for the remainder. Salaries upon employment shall be at least the state or federal minimum wage, whichever is higher.

Subd. 4. Responsibilities of coordinating agency. The commissioner shall enter into written agreement with the coordinating agency for the design, delivery, and general administration of the program. The commissioner shall set program goals and objectives and monitor the program.

Subd. 5. Reports. The coordinating agency shall submit an annual report to the commissioner one year from the effective date of Laws 1989, chapter 282, and annually thereafter. In addition, the coordinating agency shall submit to the commissioner such other reports as required to document the status and progress of the program. The annual report must include: information on the number and types of jobs created; status of program sites; wages paid program participants; types of services provided by programs; the retention of program participants; and other information to assess the progress and status of the program.

History: 1989 c 282 art 2 s 176; 1994 c 483 s 1

PLANT CLOSINGS AND DISLOCATED WORKERS

268.975 DEFINITIONS.

Subdivision 1. Terms. For the purposes of sections 268.975 to 268.98, the following terms have the meanings given them.

Subd. 2. Commissioner. "Commissioner" means the commissioner of economic security.

Subd. 3. Dislocated worker. "Dislocated worker" means an individual who is a resident of Minnesota at the time employment ceased or was working in the state at the time employment ceased and:

- (1) has been terminated or who has received a notice of termination from public or private sector employment, is eligible for or has exhausted entitlement to reemployment insurance, and is unlikely to return to the previous industry or occupation;

(2) has been terminated or has received a notice of termination of employment as a result of any plant closing or any substantial layoff at a plant, facility, or enterprise;

(3) has been long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including older individuals who may have substantial barriers to employment by reason of age; or

(4) has been self-employed, including farmers and ranchers, and is unemployed as a result of general economic conditions in the community in which the individual resides or because of natural disasters, subject to rules to be adopted by the commissioner.

Subd. 3a. Additional dislocated worker. "Additional dislocated worker" means an individual who was a full-time homemaker for a substantial number of years and derived the substantial share of support from:

(1) a spouse and no longer receives such support due to the death, divorce, permanent disability of, or permanent separation from the spouse; or

(2) public assistance on account of dependents in the home and no longer receives such support.

An additional dislocated worker must have resided in Minnesota at the time the support ceased.

Subd. 4. Eligible organization. "Eligible organization" means a local government unit, nonprofit organization, community action agency, business organization or association, or labor organization.

Subd. 5. Local government unit. "Local government unit" means a statutory or home rule charter city, county, or town.

Subd. 6. Plant closing. "Plant closing" means the announced or actual permanent shut-down of a single site of employment, or one or more facilities or operating units within a single site of employment.

Subd. 7. Prefeasibility study grant. "Prefeasibility study grant" means the grant awarded under section 268.978.

Subd. 8. Substantial layoff. "Substantial layoff" means a permanent reduction in the work force, which is not a result of a plant closing, and which results in an employment loss at a single site of employment during any 30-day period for at least 50 employees excluding those employees that work less than 20 hours a week.

Subd. 9. Substate grantee. "Substate grantee" means the agency or organization designated to administer at the local level federal dislocated worker programs pursuant to the federal Job Training Partnership Act, United States Code, title 29, section 1501, et seq.

Subd. 10. Worker adjustment services. "Worker adjustment services" means the array of employment and training services designed to assist dislocated workers make the transition to new employment, including basic readjustment assistance, training assistance, and support services.

Subd. 11. Basic readjustment assistance. "Basic readjustment assistance" means employment transition services that include, but are not limited to: development of individual readjustment plans for participants; outreach and intake; early readjustment; job or career counseling; testing; orientation; assessment, including evaluation of educational attainment and participant interests and aptitudes; determination of occupational skills; provision of occupational information; job placement assistance; labor market information; job clubs; job search; job development; prelayoff assistance; relocation assistance; and programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of plant closings or substantial layoffs.

Subd. 12. Training assistance. "Training assistance" means services that will enable a dislocated worker to become reemployed by retraining for a new occupation or industry, enhancing current skills, or relocating to employ existing skills. Training services include, but are not limited to: classroom training; occupational skill training; on-the-job training; out-of-area job search; relocation; basic and remedial education; literacy and English for training non-English speakers; entrepreneurial training; and other appropriate training activities directly related to appropriate employment opportunities in the local labor market.

Subd. 13. **Support services.** "Support services" means assistance provided to dislocated workers to enable their participation in an employment transition and training program. Services include, but are not limited to: family care assistance, including child care; commuting assistance; housing and rental assistance; counseling assistance, including personal and financial; health care; emergency health assistance; emergency financial assistance; work-related tools and clothing; and other appropriate support services that enable a person to participate in an employment and training program.

History: 1986 c 444; 1989 c 282 art 2 s 177; 1991 c 292 art 3 s 35,36; 1993 c 369 s 91-100; 1994 c 483 s 1; 1994 c 488 s 8

268.9755 [Repealed, 1995 c 131 s 3]

268.976 EARLY WARNING SYSTEM.

Subdivision 1. **Early warning indicators.** The commissioner, in cooperation with the commissioners of revenue and trade and economic development, shall establish and oversee an early warning system to identify industries and businesses likely to experience large losses in employment including a plant closing or a substantial layoff, by collecting and analyzing information which may include, but not be limited to, products and markets experiencing declining growth rates, companies and industries subject to competition from production in low wage counties, changes in ownership, layoff and employment patterns, payments of reemployment insurance contributions, and state tax payments. The commissioner may request the assistance of businesses, business organizations, and trade associations in identifying businesses, industries, and specific establishments that are likely to experience large losses in employment. The commissioner may request information and other assistance from other state agencies for the purposes of this subdivision.

Subd. 2. **Notice.** (a) The commissioner shall encourage those business establishments considering a decision to effect a plant closing, substantial layoff, or relocation of operations located in this state to give notice of that decision as early as possible to the commissioner, the employees of the affected establishment, any employee organization representing the employees, and the local government unit in which the affected establishment is located. This notice shall be in addition to any notice required under the Worker Adjustment and Retraining Notification Act, United States Code, title 29, section 2101.

(b) Notwithstanding section 268.975, subdivision 6, for purposes of this section, "plant closing" means the announced or actual permanent or temporary shutdown of a single site of employment, or one or more facilities or operating units within a single site of employment, if the shutdown results in an employment loss at the single site of employment during any 30-day period for 50 or more employees excluding employees who work less than 20 hours per week.

Subd. 3. **Employer responsibility.** An employer providing notice of a plant closing, substantial layoff, or relocation of operations under the Worker Adjustment and Retraining Notification Act, United States Code, title 29, section 2101, or under subdivision 2 must report to the commissioner the names, addresses, and occupations of the employees who will be or have been terminated.

History: 1989 c 282 art 2 s 178; 1993 c 369 s 102; 1994 c 488 s 8

268.977 [Repealed, 1993 c 369 s 146]

268.9771 RAPID AND EXPEDITIOUS RESPONSE.

Subdivision 1. **Responsibility.** The commissioner shall respond quickly and effectively to announced or actual plant closings and substantial layoffs. Affected workers and employers, as well as appropriate business organizations or associations, labor organizations, substate grantees, state and local government units, and community organizations shall be assisted by the commissioner through either rapid response activities or expeditious response activities as described in this section to respond effectively to a plant closing or mass layoff.

Subd. 2. **Coverage.** Rapid response is to be provided by the commissioner where permanent plant closings or substantial layoffs affect at least 50 workers over a 30-day period as

evidenced by actual separation from employment or by advance notification of a closing or layoff. Expeditious response is to be provided by worker adjustment services plan grantees in coordination with rapid response activities or where permanent plant closings and substantial layoffs are not otherwise covered by rapid response.

Subd. 3. Coordination. The commissioner and expeditious response grantees shall coordinate their respective rapid response and expeditious response activities. The roles and responsibilities of each shall be detailed in written agreements and address on-site contact with employer and employee representatives when notified of a plant closing or substantial layoff. The activities include formation of a community task force, collecting and disseminating information related to economic dislocation and available services to dislocated workers, providing basic readjustment assistance services to workers affected by a plant closure or substantial layoff, conducting a needs assessment survey of workers, and developing a plan of action responsive to the worker adjustment services needs of affected workers.

Subd. 4. Rapid response activities. The commissioner shall be responsible for implementing the following rapid response activities:

(1) establishing on-site contact with employer and employee representatives within a short period of time after becoming aware of a current or projected plant closing or substantial layoff in order to:

(i) provide information on and facilitate access to available public programs and services; and

(ii) provide emergency assistance adapted to the particular closure or layoff;

(2) promoting the formation of a labor-management committee by providing:

(i) immediate assistance in the establishment of the labor-management committee;

(ii) technical advice and information on sources of assistance, and liaison with other public and private services and programs; and

(iii) assistance in the selection of worker representatives in the event no union is present;

(3) collecting and disseminating information related to economic dislocation, including potential closings or layoffs, and all available resources with the state for dislocated workers;

(4) providing or obtaining appropriate financial and technical advice and liaison with economic development agencies and other organizations to assist in effort to avert dislocations;

(5) disseminating information throughout the state on the availability of services and activities carried out by the dislocated worker unit;

(6) assisting the local community in developing its own coordinated response to a plant closing or substantial layoff and access to state economic development assistance; and

(7) promoting the use of prefeasibility study grants under section 268.978.

Subd. 5. Expeditious response activities. Grantees designated to provide worker adjustment services through worker adjustment services plans shall be responsible for implementing the following expeditious response activities:

(1) establishing on-site contact with employer and employee representatives, not otherwise covered under rapid response, within a short period of time after becoming aware of a current or projected plant closing or mass layoff in order to provide information on available public programs and services;

(2) obtaining appropriate financial and technical advice and liaison with local economic development agencies and other organizations to assist in efforts to avert dislocations;

(3) disseminating information on the availability of services and activities carried out by the grantee through its worker adjustment services plan;

(4) providing basic readjustment assistance services for up to 90 days following the initial on-site meeting with the employer and employee representatives;

(5) assisting the local community in the development of its own coordinated response to the closure or layoff and access to economic development assistance;

(6) facilitating the formation of a community task force, if appropriate, to formulate a service plan to assist affected dislocated workers from plant closings and mass layoffs;

(7) conducting surveys of workers, if appropriate, affected by plant closings or layoffs to identify worker characteristics and worker adjustment service needs; and

(8) facilitating access to available public or private programs and services, including the development of proposals to provide access to additional resources to assist workers affected by plant closings and substantial layoffs.

History: 1993 c 369 s 103

268.978 PREFEASIBILITY STUDIES.

Subdivision 1. **Prefeasibility study grants.** (a) The commissioner may make grants for up to \$15,000 to eligible organizations to provide an initial assessment of the feasibility of alternatives to plant closings or substantial layoffs. The alternatives may include employee ownership, other new ownership, new products or production processes, or public financial or technical assistance to keep a plant open. Two or more eligible organizations may jointly apply for a grant under this section.

(b) Interested organizations shall apply to the commissioner for the grants. As part of the application process, applicants must provide a statement of need for a grant, information relating to the work force at the plant, the area's unemployment rate, the community's and surrounding area's labor market characteristics, information of efforts to coordinate the community's response to the plant closing or substantial layoff, a timetable of the prefeasibility study, a description of the organization applying for the grant, a description of the qualifications of persons conducting the study, and other information required by the commissioner.

(c) The commissioner shall respond to the applicant within five working days of receiving the organization's application. The commissioner shall inform each organization that applied for but did not receive a grant the reasons for the grant not being awarded. The commissioner may request further information from those organizations that did not receive a grant, and the organization may reapply for the grant.

Subd. 2. **Prefeasibility study.** (a) The prefeasibility study must explore the current and potential viability, profitability, and productivity of the plant that may close or experience a substantial layoff and alternative uses for the plant. The study is not intended to be a major examination of each possible alternative but rather is meant to quickly determine if further action or examination is feasible and should be fully explored.

(b) The prefeasibility study must contain:

(1) a description of the plant's present products, production techniques, management structure, and history;

(2) a brief discussion of the feasibility of the various alternatives for ownership, production technique, and products;

(3) an estimate of the financing required to keep the plant open and the potential sources of that financing;

(4) a description of the employer's, employees', and community's efforts to maintain the operation of the plant; and

(5) other information the commissioner may require.

Subd. 3. [Repealed, 1993 c 369 s 146]

History: 1989 c 282 art 2 s 180; 1993 c 369 s 104

268.9781 WORKER ADJUSTMENT SERVICES PLANS.

Subdivision 1. **Worker adjustment services plans.** The commissioner shall establish and fund worker adjustment services plans that are designed to assist dislocated workers in their transition to new employment. Authorized grantees shall submit a worker adjustment services plan biennially, with an annual update, in a form and manner prescribed by the commissioner. The worker adjustment services plan shall include information required in substate plans established under the federal Job Training Partnership Act, United States Code, title 29, section 1501, et seq. and a detailed description of expeditious response activities to be implemented under the plan.

Subd. 2. **Grantees.** Entities authorized to submit a worker adjustment services plan include substate grantees and up to six additional eligible organizations. Criteria for selecting the six authorized nonsubstate grantee eligible organizations shall be established by the commissioner, in consultation with the workforce development council. The criteria include, but are not limited to:

- (1) the capacity to deliver worker adjustment services;
- (2) an identifiable constituency from which eligible dislocated workers may be drawn;
- (3) a demonstration of a good faith effort to establish coordination agreements with substate grantees in whose geographic area the organization would be operating;
- (4) the capability to coordinate delivery of worker adjustment services with other appropriate programs and agencies, including educational institutions, employment service, human service agencies, and economic development agencies; and
- (5) sufficient administrative controls to ensure fiscal accountability.

Subd. 3. **Coverage.** (a) Persons eligible to receive worker adjustment services under this section include dislocated workers as defined in section 268.975, subdivision 3.

(b) Worker adjustment services available under this section shall also be available to additional dislocated workers as defined in section 268.975, subdivision 3a, when they can be provided without adversely affecting delivery of services to all dislocated workers.

Subd. 4. **Substate grantee funding.** (a) Funds allocated to substate grantees under section 268.022 for expeditious response activities and worker adjustment services under this section shall be allocated as follows:

(1) one-half of available funds shall be allocated to substate grantees based on an allocation formula prescribed by the commissioner, in consultation with the workforce development council; and

(2) one-half of available funds shall be allocated based on need as demonstrated to the commissioner in consultation with the workforce development council.

(b) The formula for allocating substate grantee funds must utilize the most appropriate information available to the commissioner to distribute funds in order to address the state's worker adjustment assistance needs. Information for the formula allocation may include, but is not limited to:

- (1) insured unemployment data;
- (2) dislocated worker special assessment receipts data;
- (3) small plant closing data;
- (4) declining industries data;
- (5) farmer-rancher economic hardship data; and
- (6) long-term unemployment data.

(c) The commissioner shall establish a uniform procedure for reallocating substate grantee funds. The criteria for reallocating funds from substate grantees not expending their allocations consistent with their worker adjustment services plans to other substate grantees shall be developed by the commissioner in consultation with the workforce development council.

History: 1993 c 369 s 105; 1995 c 131 s 2; 1Sp1995 c 3 art 4 s 30

268.9782 DISLOCATION EVENT SERVICES GRANTS.

Subdivision 1. **Dislocation event services grants.** The commissioner shall establish and fund dislocation event services grants designed to provide worker adjustment services to workers displaced as a result of larger plant closings and substantial layoffs. Grantees shall apply for a dislocation event services grant by submitting a proposal to the commissioner in a form and manner prescribed by the commissioner. The application must describe the demonstrated need for intervention, including the need for retraining, the workers to be served, the coordination of available local resources, the services to be provided, and the budget plan.

Subd. 2. **Grantees.** (a) Entities authorized to submit dislocation event services grants include substate grantees and other eligible organizations. Nonsubstate grantees shall demonstrate they meet criteria established by the commissioner, in consultation with the workforce development council. The criteria include, but are not limited to:

- (1) the capacity to deliver worker adjustment services;
- (2) an ability to coordinate its activities with substate grantees in whose geographic area the organization will be operating;
- (3) the capability to coordinate delivery of worker adjustment services with other appropriate programs and agencies, including educational institutions, employment service, human service agencies, and economic development agencies; and
- (4) sufficient administrative controls to ensure fiscal accountability.

(b) For purposes of this section, the state job service may apply directly to the commissioner for a dislocation event services grant only if the effect of a plant closing or substantial layoff is statewide or results in the termination from employment of employees of the state of Minnesota.

Subd. 3. Coverage. Persons who may receive worker adjustment services under this section are limited to dislocated workers affected by plant closings and substantial layoffs involving at least 50 workers from a single employer.

Subd. 4. Funding. The commissioner, in consultation with the workforce development council, may establish an emergency funding process for dislocation event services grants. No more than 20 percent of the estimated budget of the proposed grant may be awarded through this procedure. The grantee shall submit a formal dislocation event services grant application within 90 days of the initial award of emergency funding.

History: 1993 c 369 s 106; 1995 c 131 s 2; 1Sp1995 c 3 art 4 s 30

268.9783 RETRAINING AND TARGETED TRAINING GRANTS.

Subdivision 1. Established. The commissioner may make grants to substate grantees or other eligible organizations designed to provide for the employment of dislocated workers or targeted training assistance to workers at risk of dislocation. The focus of the grants must be on the provision of skill-based training required by the worker's employer or prospective employer. The grants must be developed to meet the worker training needs of employers individually or together. Two or more organizations may jointly apply for a grant.

Subd. 2. Retraining grants. An organization interested in applying for a grant to retrain workers who are at risk of becoming dislocated workers must apply to the commissioner. As part of the application process, an applicant must provide:

- (1) a statement of need that identifies the causes contributing to the workers being at risk of dislocation, the prospects for reemployment of the workers in the employer's industry or the worker's occupation, and the employer's past record of permanently laying off workers;
- (2) a description of the current skill level of the workers targeted for training and the skills needed by the workers to significantly reduce their vulnerability to becoming displaced from employment;
- (3) a description of the actions and investments made and planned by the employer to avert or minimize worker dislocation, including the adoption of high performance workplace and worker participation systems and practices;
- (4) a training plan that details who will receive training, the type and scope of training assistance to be provided to workers, the providers of the training, and any impact on worker wages;
- (5) evidence that the proposal has the support and involvement of labor; and
- (6) any other relevant information the commissioner requires in the grant application.

Subd. 3. Targeted training grants. An organization interested in applying for a grant to target training for dislocated workers being hired by an employer must apply to the commissioner. As part of the application process, applicants must provide:

- (1) a statement of need;
- (2) a description of local labor market characteristics, including the area's unemployment rate, types of workers available to be employed in terms of occupation, and the local availability of workers in the industry of the employer or employers;
- (3) a description of the actions and investments made and planned by the employer or employers to create and retain jobs, including past employment history, wages paid for the

same or similar work, and whether high performance workplace and worker participation systems and practices have been adopted;

(4) a description of the type of work to be performed, the work-related skills needed, projected wages, and the target group of workers requiring the training assistance;

(5) a training plan that details who will receive training, the type and scope of training assistance to be provided workers, and the providers of the training;

(6) evidence that the proposal has the support and involvement of labor; and

(7) any other relevant information the commissioner requires in the grant application.

Subd. 4. Criteria. The criteria used to award targeted training grants must include the severity of need, the target group of workers, training assistance, worker wages, utilization of resources, cost-effectiveness, grantee management capability, and other considerations adopted by the commissioner.

Subd. 5. Coverage. Persons eligible to receive retraining assistance under this section include workers at risk of dislocation from employment and dislocated workers as defined in section 268.975, subdivision 3. Workers are considered to be at risk of dislocation as evidenced by a pattern of worker layoffs from an employer, a pattern of substantial layoffs or plant closures in the same or related industry, or where worker skills needed by the employer have become obsolete due to advances in technology.

Subd. 6. Funding. The commissioner may award retraining and targeted training grants, if approved by the workforce development council, through a request for proposal process if:

(1) employers benefiting from a retraining and targeted training grant provide a match of at least one for one that may be in the form of funding, equipment, staff, instructors, and work release time for workers enrolled in training;

(2) employers benefiting from a retraining and targeted training grant to retrain workers at risk of dislocation maintain their past rate of expenditure from other sources for that training during the grant period; and

(3) employers benefiting from a retraining and targeted training grant to train new workers do not have workers in layoff status, unless it can be documented the layoff is temporary or seasonal.

Subd. 7. Limitation. No more than five percent of the amount available under section 268.022, subdivision 2, paragraph (e), may be used for the grants authorized under this section. The funds must be used from the allocation under section 268.022, subdivision 2, paragraph (e), clause (2).

Subd. 8. [Repealed, 1996 c 452 s 40; 1996 c 460 art 2 s 3]

History: 1994 c 632 art 4 s 68; 1995 c 131 s 2; 1Sp1995 c 3 art 4 s 30

268.979 DISLOCATED WORKER COORDINATION.

The commissioner shall coordinate the actions taken by state agencies and public post-secondary educational institutions to respond to or address the specific needs of dislocated workers and to provide services to dislocated workers including education and retraining. The commissioner shall also assist local government units, community groups, business associations or organizations, labor organizations, and others in coordinating their efforts in providing services to dislocated workers.

History: 1989 c 282 art 2 s 181

268.98 PERFORMANCE STANDARDS, REPORTING, COST LIMITATIONS.

Subdivision 1. Performance standards. The commissioner shall establish performance standards for the programs and activities administered or funded under sections 268.975 to 268.98. The commissioner may use, when appropriate, existing federal performance standards or, if the commissioner determines that the federal standards are inadequate or not suitable, may formulate new performance standards to ensure that the programs and activities of the dislocated worker program are effectively administered.

The commissioner shall, at a minimum, establish performance standards which appropriately gauge the program's effectiveness at achieving the following objectives:

- (1) placement of dislocated workers in employment;
- (2) replacing lost income resulting from worker dislocation from employment;
- (3) early intervention with workers shortly after becoming displaced from employment; and
- (4) retraining of workers from one occupation or industry to another.

The standards shall be applied to plans or grants authorized under sections 268.9781, 268.9782, and 268.9783 and for other activities the commissioner considers appropriate.

Subd. 2. Reports. (a) Grantees receiving funds under sections 268.9771, 268.978, 268.9781, and 268.9782 shall report to the commissioner information on program participants, activities funded, and utilization of funds in a form and manner prescribed by the commissioner.

(b) The commissioner shall report quarterly to the workforce development council information on prefeasibility study grants awarded, rapid response and expeditious response activities, worker adjustment services plans, and dislocation event services grants. Specific information to be reported shall be by agreement between the commissioner and the workforce development council.

Subd. 3. Cost limitations. (a) For purposes of sections 268.9781 and 268.9782, funds allocated to a grantee are subject to the following limitations:

- (1) a maximum of 15 percent for administration in a worker adjustment services plan and ten percent in a dislocation event services grant;
- (2) a minimum of 50 percent for provision of training assistance;
- (3) a minimum of ten percent and maximum of 30 percent for provision of support services; and
- (4) the balance used for provision of basic readjustment assistance.

(b) A waiver of the cost limitation on providing training assistance may be requested. The waiver may not permit less than 30 percent of the funds be spent on training assistance.

(c) The commissioner shall prescribe the form and manner for submission of an application for a waiver under paragraph (b). Criteria for granting a waiver shall be established by the commissioner in consultation with the workforce development council.

History: 1989 c 282 art 2 s 182; 1991 c 292 art 3 s 38; 1993 c 369 s 107; 1994 c 632 art 4 s 69; 1995 c 131 s 2; 1Sp1995 c 3 art 4 s 30; 1996 c 339 s 8